

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

FUNCTION MEDIA, LLC                   \*     Civil Docket No.  
  \*     2:07-CV-279  
VS.                                    \*     Marshall, Texas  
  \*  
  \*     January 19, 2010  
GOOGLE, INC.                        \*     8:30 A.M.

TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE CHAD EVERINGHAM  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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(Proceedings recorded by mechanical stenography,  
transcript produced on CAT system.)

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12 P R O C E E D I N G S

13  
14 COURT SECURITY OFFICER: All rise.

15 (Jury in.)

16 THE COURT: Okay. Thank you. Please be  
17 seated.

18 Morning, Ladies and Gentlemen. Thank you  
19 for being here timely.

20 We're going to begin today's morning  
21 session with some preliminary instructions that I'm  
22 going to give you. We'll follow that with the opening  
23 statements from the lawyers. And probably by the time  
24 we've concluded with opening statements from both sides,  
25 it will be time for our morning recess. So that will be

1 the schedule going forward this morning.

2 I'll try to take a recess every morning  
3 10 after 10:00 or so, or 10:15; take a 20-minute recess,  
4 and then we'll come back and work until noon. I'll try  
5 to break near noon and then come back about 1:15, and  
6 then take an afternoon recess as well.

7 So that will be kind of the day's  
8 schedule, and we'll conclude between 5:00 and 5:15 every  
9 day.

10 Members of the Jury, you have previously  
11 been sworn as the jury to try this case. As the jury,  
12 you will decide the disputed questions of fact. As the  
13 Judge, I will decide all questions of law and procedure.

14 From time to time, during the trial and  
15 at the end of the trial, I will instruct you on the  
16 rules of law that you must follow in making your  
17 decision.

18 This case involves a dispute relating to  
19 United States patents. Before summarizing the positions  
20 of the parties and the legal issues involved in the  
21 dispute, let me take a moment to explain what a patent  
22 is and how one is obtained.

23 The United States Constitution grants  
24 Congress the powers to enact laws to promote the  
25 progress of science of special useful arts by securing

1 for limited times to authors and inventors the exclusive  
2 right to their respective writings and discoveries.

3               With this power, Congress enacted the  
4 patent laws.

5               Patents are granted by the United States  
6 Patent and Trademark Office, sometimes called the PTO.

7               The process of obtaining a patent is  
8 called patent prosecution. A valid United States patent  
9 gives the patent owner the right for up to 20 years from  
10 the date the patent application was filed to prevent  
11 others from making, using, offering to sell, or selling  
12 the patented invention within the United States or from  
13 importing it into the United States without the patent  
14 holder's permission.

15              A violation of the patent owner's rights  
16 is called infringement. The patent owner may try to  
17 enforce a patent against persons believed to be  
18 infringers by a lawsuit filed in federal court.

19              To obtain a patent, one must file an  
20 application with the PTO. The PTO is an agency of the  
21 federal government and employs trained examiners who  
22 review applications for patents.

23              The application includes what is called a  
24 specification, which must contain a written description  
25 of the claimed invention telling what the invention is,

1 how it works, how to make it, and how to use it so  
2 others skilled in the field will know how to make and  
3 use it.

4           The specification concludes with one or  
5 more numbered sentences. These are the patent claims.  
6 When the patent is eventually granted by the PTO, the  
7 claims define the boundaries of its protection and give  
8 notice to the public of those protections and of those  
9 boundaries.

10           After the applicant files a patent  
11 application, a PTO Patent Examiner reviews the patent  
12 application to determine whether the claims are  
13 patentable and whether the specification adequately  
14 describes the invention claimed.

15           In examining a patent application, the  
16 Patent Examiner reviews records available to the PTO for  
17 what is referred to as prior art. The Examiner also  
18 will review prior art, if it is submitted to the PTO by  
19 the applicant.

20           Prior art is defined by law, and at a  
21 later time, I will give you specific instructions as to  
22 what constitutes prior art. However, in general, prior  
23 art includes things that existed before the claimed  
24 invention that were publicly known or used in a publicly  
25 accessible way in this country or that were patented or

1 described in a publication in any country.

2           The Examiner considers, among other  
3 things, whether each claim defines an invention that is  
4 new, useful, and not obvious in view of the prior art.

5           A patent lists the prior art that the  
6 Examiner considered. This list is called the cited  
7 references. After the prior art search and examination  
8 of the application, the Patent Examiner then informs the  
9 applicant in writing what the Examiner has found and  
10 whether any claim is patentable, and thus will be  
11 allowed. This writing from the Patent Examiner is  
12 called an office action.

13           If the Examiner rejects the claims, the  
14 applicant then responds and sometimes changes the claims  
15 or submits new claims. This process, which takes place  
16 only between the Examiner and the patent applicant, may  
17 go back and forth for some time until the Examiner is  
18 satisfied that the application and the claims meet the  
19 requirement for a patent.

20           The papers generated during this time of  
21 communicating back and forth between the Patent Examiner  
22 and the applicant make up what is called the prosecution  
23 history. All of this material becomes available to the  
24 public no later than the date when the patent issues.

25           The fact that the PTO grants a patent

1 does not necessarily mean that any invention claimed in  
2 the patent, in fact, deserves the protection of a  
3 patent.

4           For example, the PTO may not have had  
5 available to it all of the information that will be  
6 presented to you. A person accused of infringement has  
7 the right to argue here in federal court that a claimed  
8 invention in the patent is invalid, because it does not  
9 meet the requirements for a patent.

10           Let's take a moment to look at the  
11 patents in this case. You were provided with a notebook  
12 this morning that has in it a glossary of claim terms  
13 and the two patents that are at issue in this case.

14           If you'll flip to the second tab, you'll  
15 see the '025 patent. If you'll flip over to -- I  
16 believe it's the third page -- show it to you. This is  
17 what's referred to as the cover page of the patents.  
18 The cover page of the patents provide identifying  
19 information, including the date the patent issued, which  
20 is up in the top right-hand corner, the patent number  
21 along the top, as well as the inventors' names, the  
22 filing date, and a list of the cited references  
23 considered by the PTO.

24           The specification of the patent begins  
25 with an abstract, which is also found on the cover page.

1 In your copy, it will be over in the right-hand column  
2 under the heading abstract.

3 The abstract is a brief statement about  
4 the subject matter of the invention. Next come the  
5 drawings.

6 If you'll flip the page a couple of pages  
7 over, you'll see a series of drawings.

8 The drawings illustrate various aspects  
9 or features of the invention. At the conclusion of the  
10 drawings, you will find the written description of the  
11 invention.

12 I believe it's after Figure 5(h), which  
13 is the last drawing.

14 The written description is organized into  
15 two columns on each page.

16 The next several pages include the  
17 written description, and if you'll flip over, I believe  
18 that it's Column 64 of the '025 patent.

19 At the bottom of Column 64, the  
20 specification ends with numbered paragraphs. The  
21 numbered photographs are the patent claims. The patent  
22 claims determine the scope of the invention. With  
23 respect to the '025 patent, the patent claims are  
24 included through the end of the patent, Column 88.

25 Now, to help you follow the evidence, I



1 will now give you a summary of the positions of the  
2 parties. The Plaintiff in this case is Function Media,  
3 LLC. The Defendant in this case is Google,  
4 Incorporated.

5           The patents involved in this case are  
6 U.S. Patent Nos. 7,240,025 B2 and 7,249,059 B2. For  
7 convenience, the parties and I will often refer to the  
8 patents by the last three digits of the patent number.  
9 So in other words, this case involves the '025 patent  
10 and the '059 patent.

11           The Plaintiff filed suit in this Court  
12 seeking money damages from the Defendant for allegedly  
13 infringing Claims 1, 20, 37, 52, 63, 90, 179, and 231 of  
14 the '025 patent, and Claim 1 of the '059 patent.

15           The Defendant denies that it infringes  
16 the asserted claims of the '025 and '059 patents. And  
17 the Defendant also contends that the patents are  
18 invalid.

19           Your job will be to decide whether Claims  
20 1, 20, 37, 52, 63, 90, 179, and 231 of the '025 patent,  
21 and Claim 1 of the '059 patent, have been infringed.

22           If you decide that any of these claims  
23 have been infringed, you must consider the Defendant's  
24 defenses and then determine any money damages to be  
25 awarded to the Plaintiff to compensate it for the

1 infringement.

2           Now, it is my job as Judge to determine  
3 the meaning of any claim language that needs  
4 interpretation. You must accept the meanings I give you  
5 and use them when you decide whether any claim of the  
6 patents have been infringed and whether any claim is  
7 invalid.

8           You have been provided with a copy of the  
9 meanings I have adopted for certain claim terms, and  
10 that -- those meanings are included in the glossary of  
11 claim terms in the beginning -- on the first tab of your  
12 notebook.

13           I'm going to give you an outline of the  
14 trial at this point.

15           Soon, the lawyers for the parties will  
16 make what is called an opening statement. Opening  
17 statements are intended to assist you in understanding  
18 the evidence. What the lawyers say is not evidence.  
19 After the opening statements, the parties will present  
20 their evidence.

21           After all the evidence is presented, the  
22 lawyers will again address you to make final arguments.  
23 Then I will instruct you on the applicable law. You  
24 will then retire to deliberate on a verdict.

25           I'll now say a few words about your

1 conduct as jurors. First, you are not to discuss this  
2 case with anyone, including your fellow jurors, members  
3 of your family, people involved in the trial, or anyone  
4 else nor are you allowed to permit others to discuss the  
5 case with you.

6 If anyone approaches you and tries to  
7 talk to you about the case, please let me know about it  
8 immediately.

9 Now, occasionally you may pass a lawyer  
10 involved in the case or a witness or a member of their  
11 staff in the hallways. We're in fairly close quarters  
12 in this building. If those folks look at the ground and  
13 avert your gaze, please don't assume that they're being  
14 rude or standoffish. They're trying to follow the rules  
15 of the Court and avoid any contact with jurors.

16 So, please, if they don't talk to you or  
17 don't approach you, don't hold it against the lawyers,  
18 okay? The lawyers, under the rules of the Court, are  
19 prohibited from having direct contact with the jurors.  
20 So I always try to tell my jurors that they're not being  
21 rude; they're just trying to abide by the rules of the  
22 Court, okay?

23 And, second, do not read any news stories  
24 or articles or listen to any radio or television reports  
25 about the case or about anyone who has anything to do

1 with it.

2 Third, do not do any research, such as  
3 consulting dictionaries, searching the internet, or  
4 using other reference materials, and do not make any  
5 investigation about the case on your own.

6 Fourth, if you need to communicate with  
7 me, simply give a signed note to the bailiff to give to  
8 me.

9 And, fifth, do not make up your mind  
10 about what the verdict should be until after you have  
11 gone to the jury room to decide the case, and you and  
12 your fellow jurors have discussed the evidence. Keep an  
13 open mind until then.

14 And during the trial, it may be necessary  
15 for me to confer with the lawyers out of your hearing or  
16 to conduct a part of the trial out of your presence.  
17 I'll handle these matters as briefly and as conveniently  
18 for you as I can, but you should remember that they are  
19 a necessary point of any trial.

20 Let's talk about what constitutes  
21 evidence. The evidence you are to consider in deciding  
22 what the facts are consists of, one, the sworn testimony  
23 of any witness; two, the exhibits which are received  
24 into evidence; and, three, any facts to which the  
25 lawyers stipulate.

1                   Now, the following things are not  
2 evidence, and you must not consider them as evidence in  
3 deciding the facts of this case:

4                   One, statements and arguments of the  
5 attorneys; two, questions and objections of the  
6 attorneys; three, testimony that I instruct you to  
7 disregard; and finally, fourth, anything you may see or  
8 hear when the Court is not in session, even if what you  
9 see or hear is done or said by one of the parties or by  
10 one of the witnesses.

11                  Let's talk about direct and  
12 circumstantial evidence. Evidence may be direct or  
13 circumstantial.

14                  Direct evidence is direct proof of a  
15 fact, such as testimony by a witness about what that  
16 witness personally saw or heard or did.

17                  Circumstantial evidence is proof of one  
18 or more facts from which you could find another fact.

19                  Now, I'm going to give you an example  
20 that I've used in the past in other trials. It seems to  
21 work fairly well in illustrating the difference between  
22 direct and circumstantial evidence.

23                  I have an eight-year-old son, and he  
24 really likes cake, okay? Occasionally on the weekends,  
25 his mother will bake a simple yellow sheet cake, set it

1 out to cool. When it becomes cool, she'll frost it with  
2 chocolate frosting. That's his favorite kind of cake.  
3 He knows that he's not supposed to eat cake until after  
4 dinner, but if I were to go into the kitchen and find a  
5 corner of that cake missing and crumbs across the dining  
6 room floor into his bedroom, I might find him in his  
7 closet with chocolate -- in his closet with chocolate  
8 frosting on his cheeks and a big grin on his face.  
9 I might say: Son, did you eat a piece of cake, and he  
10 might tell me no, okay? That would be direct evidence.  
11 That's testimony of a witness about -- or by a witness  
12 about what the witness saw or heard or did.

13               Now, as a parent, I might choose to  
14 disbelieve that direct evidence in favor of the  
15 circumstantial evidence of the missing piece of cake,  
16 the crumbs across the floor, the frosting on his cheeks,  
17 and the grin on his face.

18               So the jurors are required to consider  
19 both types of evidence, both direct and circumstantial.  
20 And that's why the law makes no distinction between the  
21 weight to be given either direct or circumstantial  
22 evidence. It's for you to decide how much weight to  
23 give any evidence.

24               Now, in deciding the facts of this case,  
25 you may have to decide which testimony to believe and

1 which testimony not to believe. You may believe  
2 everything a witness says, part of it, or none of it.  
3 In considering the testimony of any witness, you may  
4 take into account, first, the opportunity and ability of  
5 the witness to see, hear, or know the things testified  
6 to; second, the witness' memory; third, the witness'  
7 manner while testifying; fourth, the witness' interest  
8 in the outcome of the case and any bias or prejudice;  
9 fifth, whether other evidence contradicted the witness'  
10 testimony; sixth, the reasonableness of the witness'  
11 testimony in light of all the evidence; seventh, any  
12 other factors that bear on believability.

13           The weight of the evidence as to a fact  
14 does not necessarily depend on the number of witnesses  
15 who testify. You must consider only the evidence in  
16 this case. However, you may draw such reasonable  
17 inferences from the testimony and exhibits as you feel  
18 are justified in the light of common experience.

19           You may make deductions and reach  
20 conclusions that reason and common sense lead you to  
21 make from the testimony and the evidence. That's a long  
22 way of saying do not check your common sense at the  
23 courthouse door.

24           It's your collective common sense that  
25 separates you from the rest of the folks in the

1 courtroom and enables you to best decide the facts and  
2 issues that you're going to be called upon to decide in  
3 this case.

4           The testimony of a single witness may be  
5 sufficient to prove any fact, even if a greater number  
6 of witnesses may have testified to the contrary, if,  
7 after considering all the other evidence, you believe  
8 that single witness.

9           Talk about burdens of proof. We hit on  
10 this in jury selection briefly, but when a party has the  
11 burden of proof on any claim or affirmative defense by a  
12 preponderance of the evidence, it means you must be  
13 persuaded by the evidence that the claim or affirmative  
14 defense is more likely true than not true.

15           You should base your decision on all of  
16 the evidence regardless of which party presented it.

17           Now, when a party has the burden of  
18 proving any claim or defense by clear and convincing  
19 evidence, it means the party may persuade you that it is  
20 highly probable that the facts are as that party  
21 contends. Such evidence requires a higher standard of  
22 proof than proof by a preponderance of the evidence.

23           Again, you should base your decision on  
24 all of the evidence regardless of which party presented  
25 it.



1                   Now, when knowledge of a technical  
2 subject matter may be helpful to the jury, a person who  
3 has special training or experience in that technical  
4 field, called an expert witness, is permitted to state  
5 his or her opinion on those technical matters.

6                   However, you are not required to accept  
7 that opinion. As with any other witness, it is up to  
8 you to decide whether to rely on it.

9                   During the trial of this case, certain  
10 testimony may be presented to you by way of depositions.  
11 The testimony of a witness who, for some reason, cannot  
12 be present to testify from the witness stand is usually  
13 presented either in writing or by way of video under  
14 oath in the form of a deposition.

15                   Such testimony is entitled to the same  
16 consideration, and insofar as possible, is to be judged  
17 as to credibility, weighed, and otherwise considered by  
18 the jury in the same way as if the witness had been  
19 present and had given from the witness stand the  
20 testimony read or shown to you from the deposition.

21                   Now, it's the duty of the attorney on  
22 each side of a case to object when the other side offers  
23 testimony or other evidence which the attorney believes  
24 is not properly admissible. Upon allowing testimony or  
25 other evidence to be introduced over the objection of an

1 attorney, the Court does not, unless expressly stated,  
2 indicate any opinion as to the weight or effect of such  
3 evidence.

4           As stated before, the jurors are the sole  
5 judges of the credibility of all witnesses and the  
6 weight and effect of all of the evidence.

7           When the Court has sustained an objection  
8 to a question addressed to a witness, the jury must  
9 disregard the question entirely and may draw no  
10 inference from the wording of it or speculate as to what  
11 the witness would have said if permitted to answer any  
12 question.

13           Now, the law of the United States permits  
14 the Judge to comment to the jury on the evidence in the  
15 case. Such comments are only expressions of the Judge's  
16 opinion as to the facts, and the jury may disregard them  
17 entirely, since the jurors are the sole judges of the  
18 facts.

19           Now, this conclude my preliminary remarks  
20 and instructions, Ladies and Gentlemen.

21           Is the Rule to be invoked?

22           MR. TRIBBLE: We haven't discussed that,  
23 Your Honor, but I thought it would be invoked after  
24 opening argument.

25           THE COURT: Well, I'd like to go ahead

1 and swear the witnesses, if I can, if it's going to be  
2 invoked.

3 MR. TRIBBLE: Very well.

4 Gil, do you want to invoke the Rule?

5 MR. GILLAM: Yes, Your Honor, with the  
6 exception of experts, Your Honor.

7 THE COURT: All right. Well, do we have  
8 witnesses who are here that can come inside the bar and  
9 be sworn at this time?

10 MR. TRIBBLE: Your Honor, we have a  
11 two-person Plaintiff here, two-person company. We would  
12 like Lucinda Stone excepted from the Rule as well.

13 THE COURT: Okay.

14 MR. VERHOEVEN: We have no objection with  
15 that, Your Honor.

16 THE COURT: Okay. If they come inside  
17 the bar, I'll go ahead and --

18 (Witnesses sworn.)

19 THE COURT: Okay. Well --

20 MR. VERHOEVEN: I'm sorry, Your Honor.  
21 We have an expert here as well. I apologize.

22 THE COURT: That's alright. I'll just  
23 swear him at the time he takes the stand.

24 MR. VERHOEVEN: Thank you, Your Honor.

25 THE COURT: All right. Well, those

1 witnesses who were just sworn included expert and two  
2 party representatives, and I understand there's no  
3 objection to excepting the party representatives; is  
4 that correct?

5 MR. VERHOEVEN: That's correct, Your  
6 Honor.

7 THE COURT: Okay. Those experts will be  
8 exempt from the Rule. But with respect to the other  
9 witnesses, counsel understands their obligation that  
10 they need to retire from the courtroom and remain  
11 outside the presence, hearing, and proceedings in Court  
12 and are not to discuss the case among themselves or with  
13 anyone else, the only exception being they may discuss  
14 it with the lawyers.

15 The Plaintiff may address the jury.

16 MR. TRIBBLE: Thank you, Your Honor.

17 MR. VERHOEVEN: Your Honor,  
18 Mr. Verhoeven. May I have a side-bar, please?

19 THE COURT: Yes.

20 MR. VERHOEVEN: Thank you.

21 (Bench conference.)

22 MR. DEFRANCO: I do believe that the  
23 parties exchanged demonstratives last night to be used  
24 in openings, and there are a couple of objections that  
25 we probably should address rather than interrupting the

1 flow of the argument.

2 THE COURT: I'm in chambers every morning  
3 at 8:00 o'clock before we start trial. I've been there  
4 since 7:30 this morning. I understand that my clerk  
5 came out to see you before trial to see if y'all needed  
6 to see me about anything.

7 So, you know, what are the objections?

8 MR. DEFRANCO: You-all had some  
9 objections to our slides, didn't you? Are you going to  
10 let them pass?

11 MR. TRIBBLE: Yeah, sure.

12 MR. DEFRANCO: Okay.

13 MR. TRIBBLE: We'll let them pass.

14 THE COURT: All right. The objections  
15 have been withdrawn by both sides.

16 Proceed.

17 MR. VERHOEVEN: If we see anything in the  
18 future -- if we have something before the Court, we  
19 should --

20 THE COURT: Yes, particularly, if my  
21 briefing attorney comes out and inquires if there's  
22 anything to take up. So it's -- yeah, I'll be in  
23 chambers every morning by 8:00, 30 minutes before we  
24 start with the jury.

25 MR. VERHOEVEN: Thank you.

1 THE COURT: The objection is withdrawn.

2 Let's proceed.

3 (Bench conference concluded.)

4 MR. TRIBBLE: Good morning.

5 My name is Max Tribble, and I represent

6 Function Media as well as its owners, Michael Dean.

7 Please stand.

8 (Complies.)

9 MR. TRIBBLE: And Lucinda Stone.

10 You'll hear from Michael Dean as the very  
11 first witness in this trial, and you'll hear later on in  
12 the case from Ms. Stone. You'll also hear during this  
13 case from the attorneys, Mr. Robert Parker, Joe  
14 Grinstein, and Justin Nelson.

15 And what you'll hear is that this is a  
16 case about property rights, intellectual property  
17 rights. Function Media holds patents that give it the  
18 exclusive right to revolutionary, specialized technology  
19 for handling internet advertising in a way that allows  
20 millions of advertisers to advertise on millions or even  
21 billions of web pages in a way that is automated, easy  
22 to use, and more profitable than anything that had come  
23 before, and in a way that sends customized ads,  
24 customized for each website according to the rules for  
25 their particular website.

1           The evidence will show that Michael Dean  
2 and Lucinda Stone conceived of their invention in 1998.  
3 They disclosed their invention to the Patent Office in  
4 January of 2000. And they applied for a series of  
5 patents, which, after going through the lengthy  
6 examination process that you saw the video about a few  
7 weeks ago, the Patent Office granted a series of patents  
8 relating to their invention.

9           This lawsuit is about two of those  
10 patents, the '025 and the '059, which are in your juror  
11 notebooks.

12           Now, Function Media has brought this  
13 lawsuit to enforce its patent rights. As you will hear  
14 from Google's own expert, the most important patents  
15 usually have to be litigated, because major infringers  
16 rarely want to pay the full value of what the inventions  
17 are worth.

18           And it is quite appropriate that we're  
19 here today in Marshall, a town named for John Marshall,  
20 the longest serving Chief Justice of the United States  
21 Supreme Court, a man who devoted his entire life to the  
22 rule of law, regardless of the size and the form of the  
23 parties before him.

24           Now, our -- as you heard from the Court,  
25 our Founding Fathers thought that patent protection is

1 so important that they wrote it into the United States  
2 Constitution. And our law provides that every patent,  
3 including these patents at issue here -- every patent  
4 provides the patent holder the exclusive right or the  
5 right to exclude all others from making, using, or  
6 selling the patented invention.

7                   And in this way, a patent is like a deed  
8 to property. And like any property owner, the patent  
9 holder has the absolute right to keep all others off its  
10 property. If someone trespasses or uses your property,  
11 the law requires that they pay for that use.

12                   And patent law is the same way. And like  
13 trespass, it doesn't matter whether the patent infringer  
14 knew about the patent or not. If Exxon drilled a well  
15 on your property and generated \$5 billion in revenues,  
16 they would have to pay you a reasonable royalty, a  
17 percentage of what they generated from drilling a well  
18 on your property, regardless of whether they knew it was  
19 your property or not.

20                   And it is also no defense to complain  
21 that the patent holder never implemented the invention,  
22 never sold it, or was just too small to have generated  
23 as much money.

24                   If Exxon drilled a well on your land, it  
25 would still have to pay you a reasonable royalty, even



1 if you didn't have oil rigs yourself or refineries, even  
2 if you didn't drill the well yourself. It's your  
3 property. It doesn't matter.

4           The evidence will show that my clients  
5 conceived of their invention first. They applied for  
6 patent -- excuse me -- for patents protecting it. And  
7 the evidence will show that Google is using that  
8 technology and, therefore, must pay a reasonable  
9 royalty.

10           And the evidence will show that Google  
11 has generated over \$5 billion in revenues. In applying  
12 the industry standard rate of 12 percent, that results  
13 in reasonable royalty damages of \$600 million.

14           Now, let me talk about Function Media.  
15 Function Media is a Texas company. It's owned 100  
16 percent by Michael Dean and Lucinda Stone. Michael Dean  
17 and his wife have been living in Texas for the last 12  
18 years. He's originally from California. He's a  
19 decorated Vietnam veteran.

20           When he came home from Vietnam, he moved  
21 back to his hometown, Santa Cruz, California, where he  
22 met Lucinda Stone. Lucinda Stone was originally from  
23 California. She was the Director of Development for  
24 several centers for abused children, and eventually  
25 became the Executive Director of Big Brothers/Big

1 Sisters of Sonoma County, California. And since then,  
2 she's been an entrepreneur in the internet advertising  
3 business.

4           Let me give you some background about the  
5 invention. In 1994, the internet was just starting. In  
6 that year, Michael Dean and Lucinda Stone decided to  
7 create an internet advertising website specializing in  
8 promoting bed and breakfast hotels. They still run that  
9 business today. It's called Virtual Cities, and it has  
10 become one of the most successful bed and breakfast  
11 directories on the internet.

12           In running their business, Mr. Dean and  
13 Ms. Stone had a lot of clients who were literally  
14 mom-and-pop operations, and they were operations that  
15 wanted to harness the power of the internet and  
16 advertise on even more websites than Virtual Cities, but  
17 there were several problems.

18           The systems available at that time were  
19 hard to use, expensive, and required specialized  
20 training. Many of the systems required you to go  
21 through an ad agency who had specialized technicians who  
22 would manually format the ads to be sent out over the  
23 internet.

24           It was all very time-consuming,  
25 labor-intensive, and it was also difficult for the

1 websites that wanted to run ads, especially small- and  
2 medium-size websites, who -- they just didn't have  
3 enough viewers to justify all the expense and the effort  
4 that was required in order to run ads.

5           And so let's -- let's take a look at how  
6 things worked back before the Function Media inventions.

7           Now, for a seller or advertiser to  
8 advertise on even just one website -- one advertiser,  
9 one website, there were several steps involved. The  
10 advertiser would have to negotiate a contract. They'd  
11 have to specify the way it wanted the ad to look on the  
12 website, and either the publisher, the website itself,  
13 or the advertiser would have to customize the ad  
14 according to the specifications of the advertiser. And  
15 then the ad would have to be uploaded to the website.

16           Now, it was very expensive, cumbersome,  
17 labor-intensive, but the complexity of that system,  
18 think about it. If the same seller -- they don't want  
19 to advertise on just one website. If they wanted to  
20 advertise on multiple websites, the complexity would  
21 grow tremendously.

22           And then think about it. In the real  
23 world when you had multiple advertisers and who wanted  
24 to advertise on multiple websites, the complexity would  
25 grow even more tremendously. And that is where the

1 Function Media invention came to be.

2           Mr. Dean and Ms. Stone, they were a  
3 website operator. They saw things from a different  
4 point of view. Prior to this time, the industry thought  
5 that an advertiser wouldn't pay for an ad unless they  
6 had total control over how it looked.

7           But as a website operator, Mr. Dean and  
8 Ms. Stone realized that it was very important to the  
9 website to have ads that fit with the color scheme and  
10 the look and feel of the website that didn't clash.  
11 And in this way, they were going against the prior art,  
12 what had come before. The entire industry disagreed  
13 with them on this point. And instead, they came up with  
14 a system that conceived of a new way to do things, and  
15 here's what I mean by look and feel.

16           I went to the University of Texas, and so  
17 I might go to the UT website. My young law partner over  
18 there, Jeremy Brandon, he went to Texas A&M. He might  
19 go to the A&M website.

20           I'm sure that the people at UT and A&M,  
21 they spent an awful lot of time and an awful lot of  
22 money to make their sites as pleasing to the eye as  
23 possible. And the last thing the UT site would want is  
24 to have a maroon ad being run on their website, and the  
25 last thing A&M would want would be to have a burnt

1 orange ad run on their website.

2           That's look and feel; it's color scheme;  
3 it's things like that.

4           And so Google's own documents talk about  
5 the fact that the way to make the most money on  
6 advertising is to have the ads fit with the color scheme  
7 of the entire website. Choosing the right palettes of  
8 colors can mean the difference between ads your users  
9 will notice and ads they will skip right over.

10           And when an ad gets clicked on, that's  
11 when the website gets paid.

12           And so the invention of Michael Dean and  
13 Lucinda Stone, back in 1998, was simply this: You had  
14 the advertiser, the seller, and you had the websites.  
15 They realized, looking at it from a website point of  
16 view, that you needed customized ads for each particular  
17 website.

18           This could be UT; this could be A&M; and  
19 you needed them -- the same ad customized according to  
20 the color scheme and look and feel of each particular  
21 website.

22           And so they conceived of inserting a  
23 central processing system that would act as a middle man  
24 to automate the whole process and to customize the ads.  
25 You could have advertisers, or sellers they're called in

1 the patent, enter in their proposed ad as well as the  
2 information about what websites they wanted to target  
3 for their ad. You could have all the websites send  
4 their color rules.

5           Here's UT. And the different formatting  
6 rules from each website would go to the central system.  
7 The central system would decide which websites were  
8 appropriate for the ad and would format the ad according  
9 to the different rules that had been put in by each  
10 website, and then send the customized ads out to the  
11 websites.

12           And that was the invention that is --  
13 aspects of which are included in the patents-in-suit  
14 today, the '025 and the '059 patent.

15           Now, in 1998, Michael Dean and Lucinda  
16 Stone started to develop -- started to implement a  
17 computer system that -- that embodied all of this. They  
18 implemented phase one, as you'll hear testimony about,  
19 and it turns out that implementing a new computer system  
20 is a lot more expensive and time-consuming than they  
21 thought.

22           They implemented phase one, and it  
23 worked, as you will see. And they included in the  
24 software -- in the source code of the software, they  
25 included place holders for the rest of the system.

1 But it turns out that -- that this was 1998. They were  
2 years ahead of their time. And the market didn't yet  
3 understand how this would revolutionize the internet  
4 advertising industry. And so the -- the programming was  
5 just too expensive to be justified at that time.  
6 And so they stopped. They stopped and didn't fully  
7 implement the system, but that's okay. A patent holder  
8 is not required to implement the system.

9           You'll hear Google argue they -- they  
10 didn't program the full system; it didn't work; they  
11 failed. That's irrelevant. The fact of the matter is  
12 that all an inventor has to do -- he doesn't have to  
13 build the system. He has to disclose enough in the  
14 written description, in the figures in the patent, to  
15 allow a person skilled in this field to build the  
16 system.

17           And take a look. That's exactly what  
18 they did. All these figures and flow charts and  
19 description, that's all that's required. They followed  
20 the rules, and that's exactly what they did.

21           Now, let's talk about -- oh, by the way,  
22 this disclosure in the '025, it's exactly the same as  
23 the disclosure filed for their original patent that they  
24 filed in January of 2000. That's an important date:  
25 January 2000. They filed this same disclosure

1 disclosing their invention, the exact same disclosure as  
2 is right here in the '025.

3 And that was almost three years before  
4 Google's infringing system, AdSense for Content, came  
5 out. That's an important fact.

6 Now, let's talk about Google. You've  
7 heard -- probably heard about Google. It's one of the  
8 largest internet companies in the world. It has  
9 headquarters in California, over 20,000 employees,  
10 offices all over the world. And it's most famous for  
11 internet searching.

12 But Google doesn't really make any money  
13 from its internet search. It makes over 95 percent of  
14 its revenues from internet advertising, and it primarily  
15 does that in two ways.

16 The first is search advertising, and  
17 here's the way that works: You type in search terms at  
18 google.com, and it pulls up search results right here,  
19 and along with it, it includes ads.

20 And if you click on an ad, then Google  
21 gets paid for that advertisement. And that's all I'm  
22 going to say about it. That is not at issue in this  
23 lawsuit. All the money they make from their internet  
24 search, that's not at issue in this lawsuit.

25 The other way that Google does



1 advertising is they advertise -- they provide  
2 advertisements for other people's websites, just like  
3 the Function Media invention.

4           So here, for example, is a real website,  
5 cheese.com, and you'll see there are these ads on the  
6 right-hand side, ads by Google. And if you click on  
7 those ads, then Google gets paid, and they pay a large  
8 percentage of the money to the actual website,  
9 cheese.com.

10           And so let me talk to you a minute about  
11 infringement. The first question you'll be asked at the  
12 end of this trial is whether Google's AdSense for  
13 Content and its -- in combination with its other  
14 products, whether that infringes the Function Media  
15 patents, whether it does the same thing as what is  
16 covered by the Function Media patents.

17           And as Plaintiff, we bear the burden of  
18 proof. The Judge has instructed you that our burden on  
19 infringement is a preponderance of the evidence, more  
20 likely than not. And so that's where we have a feather;  
21 we have 1 ton on each side. It's 51 percent or just  
22 ever so slightly -- if the evidence ever so slightly  
23 weighs in our favor, we've met our burden of proof of a  
24 preponderance of the evidence.

25           Now, we don't have time to go through

1 every claim asserted here. We're asserting, basically,  
2 of the '025, there are eight different claims that we  
3 believe are infringed. Here's Claim 1 to just give you  
4 a feel for what's going to be discussed during this  
5 lawsuit.

6 Keep this in mind. If even one claim is  
7 infringed of a patent, that means the patent is  
8 infringed. We don't have to prove all eight, although  
9 we will.

10 Now, you will hear from Dr. Thomas Rhyne.  
11 He's right out there. Dr. Rhyne is one of the most  
12 accomplished engineers in the nation. He has multiple  
13 degrees, a Ph.D. He has had the honor of teaching both  
14 at the University of Texas and Texas A&M.

15 And Dr. Rhyne will explain to you that --  
16 that for every claim that we're asserting, each and  
17 every element is embodied in Google's system, and,  
18 therefore, they infringe these patents.

19 Now, to be fair, Google denies  
20 infringement, but I think at the end of the day, you'll  
21 see through that. Google is going to say, for example,  
22 that their systems operate in such a way that they don't  
23 publish ads on a website; that what happens is there's a  
24 hole created in a viewer's browser -- web browser, like  
25 Internet Explorer; and that they serve ads to that hole;

1 they don't serve it to the website.

2           But you'll find, I think, that Dr. Rhyne  
3 will explain that that's just a word game. And you'll  
4 see various documents. It says: Ads by Google. And  
5 you'll see Google document after Google document that  
6 says that what they do is they put ads on websites.  
7 And it's just a word game. And while we're on the  
8 subject of word games, Google's other non-infringement  
9 argument is this: The patents say that the system  
10 selects a website on which to display an ad, but Google  
11 will say that their system takes a website and then  
12 selects ads to display on it.

13           Dr. Rhyne will explain that that is just  
14 a word game. It is just chicken and egg, and that their  
15 system absolutely does what is required by the patents.

16           Now, Google's other contention in this  
17 case is that the patents are invalid; that the Patent  
18 Office made a terrible mistake; and that these two  
19 patents never should have been issued.

20           Now, remember, our burden of proof on  
21 infringement is a preponderance of the evidence.  
22 Google's burden to prove invalidity is clear and  
23 convincing evidence. And the reason for that is that  
24 these two patents have gone through the examination  
25 process, and they are presumed, under the law, to be

1 valid.

2           And so, therefore, to overcome that  
3 presumption of validity, Google must establish that  
4 they're invalid by clear and convincing evidence.

5           Now, Google is going to have two  
6 invalidity arguments. First, it's going to argue what  
7 is called anticipation. And what that means is they're  
8 going to have to prove that there was some prior system  
9 that satisfied for each claim we're asserting, each and  
10 every element; that we weren't first; there was a system  
11 out there that did all of this.

12           Dr. Rhyne will explain it's just not  
13 there. The fact of the matter is, there was no system  
14 prior to us that did the automated customization that is  
15 required by these patents.

16           Now, keep in mind there will be a lot of  
17 evidence coming in. Don't be confused. Google cannot  
18 cobble together a piece from this system over here and a  
19 piece from that system over there in order to come up  
20 with all the elements. All elements have to be in a  
21 single prior system. It's just not there.

22           So Google will resort to a fall-back, a  
23 secondary argument, known as obviousness, and they will  
24 say, even though this patented system wasn't out there  
25 in the real world, even though no one had done this

1 before, it would have been obvious to a person skilled  
2 in this field to do this.

3 And so, of course, the question is, if it  
4 was so obvious, why wasn't anyone doing it?

5 And the question is, doesn't everything  
6 look obvious once you know the answer?

7 It's like in a -- when I was going to  
8 school, they had -- in the math book, they would have  
9 the answers to every odd question, the answers in the  
10 back of the book. And that was to help you. You would  
11 see the answer and then, of course, it was obvious. You  
12 could figure out how to get that result.

13 And that's exactly the case here.  
14 Once someone puts it down in writing in a patent  
15 then, of course, it's obvious, but the fact of the  
16 matter is, the industry was headed in a different  
17 direction. No one had this central processing  
18 system that did the customization for each website.  
19 The industry was headed in a different direction,  
20 because they thought that advertisers wouldn't pay for  
21 an ad that they didn't have total control over, unlike  
22 our system.

23 And it's proven by the fact that we made  
24 our initial disclosure in January of 2000. We filed for  
25 the '059 patent in July of 2002. AdSense for Content,

1 the accused infringing product by Google, came out in  
2 late 2002.

3 We filed for the '025 in September of  
4 2004 with the same specification that we had filed back  
5 in January of 2000. Both of these patents issued in  
6 July of 2007, and then we filed this suit to enforce our  
7 rights.

8 And then three months later, Google filed  
9 for a similar patent. How can they claim that our  
10 patents were not new and novel when they're applying for  
11 a patent on similar technology three months after us and  
12 seven and a half years after our original disclosure?

13 And by the way, in their patent -- you'll  
14 hear about this. This is the Tomasz patent. He's at  
15 Google. When he filed for this, he didn't disclose any  
16 of the prior art that Google says invalidates our  
17 patents.

18 And so they tell the jury these prior  
19 systems were the same thing as what you're doing, but  
20 they tell the PTO not one word. The fact of the matter  
21 is, nobody did what we do before.

22 Now, I want to talk a little bit about  
23 damages. There's no doubt about it. We're asking for a  
24 reasonable royalty of 12 percent. That's \$600 million.  
25 You will hear testimony that Google generated over \$5

1 billion in revenue from these products.

2 And you'll even hear from Google's own  
3 expert that in cases like this one, the question is,  
4 what is the fair value to Google, not just to Function  
5 Media?

6 THE COURT: You've got 10 minutes  
7 remaining.

8 MR. TRIBBLE: Thank you, Your Honor.

9 And the formula for damages that the  
10 Court will tell you that you are to use in this case is  
11 called a reasonable royalty. And as we've discussed, if  
12 you have property, and an oil company drills a well on  
13 it, they pay you a royalty, a percentage of the money  
14 generated from that well.

15 And the question you have at the end of  
16 the day, because I think that -- at the end of the  
17 trial, I think you will agree that the patents are  
18 infringed. The patents are valid. The question you  
19 will have at the end of the day is, what percentage  
20 reasonable royalty applies here?

21 And you're going to hear, I believe, that  
22 the test is, what would Google pay if it knew about the  
23 patents; it agreed, it agreed with us that they were  
24 infringed; and it agreed with us that the patents are  
25 valid? In that hypothetical circumstance, then what

1 reasonable royalty would Google pay?

2           And you will hear testimony by a forensic  
3 accountant, Walt Bratic, with 20 years' experience in  
4 this field, and he's spent numerous hours pouring  
5 through Google's accounting and financial records and  
6 surveying the industry to find out what would be a  
7 reasonable royalty in these circumstances.

8           And why 12 percent? You're going to hear  
9 that in 2007 when Google's infringement started, the  
10 average -- the industry average rate for internet  
11 advertising was 13-1/2 percent. And in 2008, by the  
12 way, it was 15.8 percent.

13           And so you will hear how important  
14 AdSense for Content is to Google. Sergey Brin, the  
15 founder of Google, called the infringing product  
16 Google's monetization engine.

17           Others at Google pointed out the beauty  
18 of AdSense for Content. It's our invention, but it's  
19 automated competitive advantage that does the  
20 formatting.

21           And what did it do? Faster penetration  
22 into the market; better monetization, more money; better  
23 margins via a low cost infrastructure, higher profit  
24 margins.

25           That's our system, because we have the



1 center processing system that -- that serves as the  
2 middle man between advertisers and websites.

3 And so because of that importance and  
4 because of the 13-1/2 percent rate in 2007 and the 15.3  
5 percent rate in 2008 and because of a lot of other  
6 analyses that in great detail, you will hear about from  
7 Mr. Bratic, the appropriate rate for a reasonable  
8 royalty in this case is 12 percent.

9 And that applies to revenues. And 12  
10 percent of the \$5 billion in revenues is \$600 million.

11 Now, what is Google going to say in  
12 response? We're just a small company. But Google's  
13 expert concedes that that doesn't matter. That is  
14 irrelevant.

15 They're going to say that Google doesn't  
16 pay big money for patents, but you'll see that Google  
17 paid 2 percent of their entire company for just a single  
18 patent and that 2 percent today is worth \$1.8 billion  
19 for a single patent.

20 And Google's own expert -- Google will  
21 say: We don't pay a running royalty. We only pay a  
22 one-time lump sum. But Google's own expert agrees that  
23 it would be quote, unquote, crazy to agree to anything  
24 other than a running royalty under these circumstances.  
25 And you might -- you'll also hear that Google sends --

1 the majority of this \$5 billion, they share that with  
2 what are called the Google partners, the websites.

3 In other words, of the \$5 billion, the  
4 majority of that gets -- Google shares with the actual  
5 websites. They have to get paid something; otherwise,  
6 they wouldn't run the ads. You will see that Google is  
7 sharing profits with its partners.

8 And Google's own documents say that  
9 Google has such dominant market share in this industry,  
10 internet advertising, because of our invention that they  
11 could pick the percentage at a lower amount if they  
12 wanted to. But they want to maintain their dominant  
13 position.

14 And you'll hear from Google's own  
15 mouth -- or, frankly, seeing a document, that in  
16 Google's view, the party that holds the patent is the  
17 person that's dictating -- has the stronger position in  
18 dictating the terms under which the infringing party  
19 would pay.

20 And so I just ask you to keep in mind, as  
21 you go through this case -- you're going to hear a lot  
22 of testimony. Keep in mind, pay attention to what  
23 Google said in documents before this lawsuit was filed  
24 versus what they say now, now that we're here in Court.

25 And finally, I would just say, pay

1 attention to the documents. Listen to the witnesses.  
2 Judge their demeanor; judge their truthfulness. And  
3 keep in mind, nothing I say is evidence. The evidence  
4 is going to come from the witness stand and from the  
5 documents that we're going to show you.

6 And the same is true, of course, for  
7 Google's attorney. And I just ask you, keep that in  
8 mind. Pay attention to the documents. Look at what  
9 they said before there was a lawsuit.

10 Thank you.

11 THE COURT: Thank you.

12 MR. VERHOEVEN: Your Honor, I'm just  
13 going to pull an easel up, if I may.

14 THE COURT: Of course.

15 MR. VERHOEVEN: May I proceed, Your  
16 Honor?

17 THE COURT: Yes, sir.

18 MR. VERHOEVEN: Charles, is this on?  
19 Okay. Good morning, Members of the Jury. My name is  
20 Charlie Verhoeven, and I represent Google.

21 Before I start with my argument, I'd like  
22 to just introduce you to the other members of our team.  
23 We have four people from Google here today: Shana  
24 Stanton and Tim Alger. In the pews there, we have Doug  
25 Hudson and Leslie Altherr.

1                   In addition to myself, at counsel table,  
2 we have Gil Gillam, Ed DeFranco, and Amy Candido.

3                   We also have our paralegal, O'Neil Bryan.  
4 Neil?

5                   And then Charles Duncan is the guy that's  
6 going to help me with my slides. So you can put some  
7 names to faces.

8                   As the Court has told you and as  
9 Mr. Tribble has told you, Google has two defenses in  
10 this case. And the Court has told you, you need to keep  
11 an open mind and listen to all the evidence before you  
12 make up your mind.

13                  And I appreciate that you're going to do  
14 that, because the evidence that Google has is very  
15 compelling. The first -- the first defense is that  
16 Google does not infringe. And the second defense is  
17 that the patents here are invalid.

18                  Now, Function Media has the burden to  
19 show you that Google infringes. And as the Court will  
20 instruct you, in order to do that, they have to prove by  
21 a preponderance of the evidence that Google infringes  
22 each and every element of an asserted claim.

23                  It's not enough that it's similar or  
24 there may be some overlap. You need to actually look at  
25 each element and ask, for each element, is Google

1 infringing the claim?

2           Now, Mr. Tribble made a number of  
3 generalizations and statements saying that Google  
4 infringed, but he didn't go through the elements of any  
5 of the claims and apply those to the Google system to  
6 show you that they met those claims.

7           I intend to do that. I intend to show  
8 you that there's at least three different elements, big  
9 elements, in these claims that Google does not infringe  
10 and that the Plaintiff will not be able to show you that  
11 Google meets those claims.

12           So you saw the property boundary analogy.  
13 Well, a patent is not something physical that you can  
14 see. It's -- what you do is, you look at the claim in  
15 the back of the patent and see what the boundaries are  
16 of that claim and whether or not Google is within those  
17 boundaries.

18           And what we're going to show you is that  
19 in three important respects, for three elements, Google  
20 does not meet those claims, and it's outside of the  
21 boundaries, not on the property. And I'm going to go  
22 through that in more detail in a minute.

23           The second defense is that the patents  
24 here do not deserve to be valid. Now, surely, it's  
25 true. The Patent Office issued these patents, but we're

1 going to show you that there's others out there out in  
2 the marketplace who are doing the exact same thing that  
3 Mr. Dean and Ms. Stone patented, but they were doing it  
4 before.

5 And we're going to go through element by  
6 element and show you these systems that were doing  
7 everything that's claimed in the Function Media patents  
8 but were doing it before.

9 And there's two systems we're going to  
10 show you that did that.

11 The first one is called AdForce. So  
12 we're going to present witnesses and documentation that  
13 show you there's a system out there that did what the  
14 Function Media patents did, but it did it before.

15 And guess what? The Patent Office didn't  
16 know about it.

17 There's another system called DoubleClick  
18 that did the same thing before.

19 Mr. Tribble said, well, there was no  
20 central controller, that what you saw was those nuts and  
21 bolts going around that did that before the Dean patent.  
22 That's not true.

23 We'll show you evidence that, in fact,  
24 both AdSense (sic) and DoubleClick did that, and they  
25 did it before Mr. Dean and Ms. -- Mr. Dean and Ms. Stone

1 came up with their patent.

2           The Patent Office didn't know about  
3 AdForce, and the Patent Office didn't know about  
4 DoubleClick.

5           And so what I ask you to do, as you hear  
6 this evidence, is to ask yourself this question: What  
7 if the Patent Office did know about AdForce? What if it  
8 did know about DoubleClick? What if it saw the evidence  
9 that you're going to see when we present it at this  
10 trial? Would it have issued these patents?

11           We think you would conclude that it would  
12 not, because the patents aren't new and unique, because  
13 somebody else did it before.

14           I'm also going to talk a little bit about  
15 damages. Plaintiff is asking for \$600,000 dollars -- or  
16 excuse me -- I wish. They're asking for \$600 million,  
17 \$600 million. They didn't tell you how long the license  
18 was for. Two years. \$600 million for two years.

19           Now, Mr. Tribble -- if I may go around to  
20 this easel, please, Your Honor?

21           THE COURT: Yes.

22           MR. VERHOEVEN: He showed you a pie  
23 chart, and he said 12 percent. Well, what's important  
24 to note here is that's 12 percent of what's called  
25 revenue. Not profit, revenue.

1                   And Google -- and I'll show you this --  
2 Google, the vast majority of its revenue, it gives back  
3 to the publishers, and it only keeps a piece of it. And  
4 I'll go through that.

5                   So the important thing to look at here is  
6 profit. How much of Google's profit do they say they're  
7 entitled to? And if you did a pie chart of that, it  
8 comes to 65 percent.

9                   Now, this might be mathematically  
10 correct -- or it is mathematically correct. It may not  
11 be illustrated absolutely correct.

12                  But they're saying here's Google's  
13 profit, okay, and that Mr. Dean and Ms. Stone are  
14 entitled to all of this; 65 percent of all of the profit  
15 that Google made, they want you to give to them for two  
16 years, and Google only gets to keep the remainder.

17                  Is that reasonable? We think you'll  
18 conclude it's not.

19                  So that's a summary of what I'm going to  
20 talk about today. I'd like to go now to -- to talk a  
21 little bit about my client, Google.

22                  Now, Google's got a story, too, and it's  
23 a pretty good story. I don't know if you've read about  
24 Google. Most of you have probably used Google if you've  
25 done searching on the internet.



1                   Google has a search service. You can go  
2 on to the Google site and type in words and it will  
3 search for websites for you and bring you back  
4 information. That's free for internet users.

5                   Google has a whole bunch of other  
6 services, too. It -- you can have free e-mail on  
7 Google. It's called Gmail. And you don't have to pay  
8 anybody for it. You just set up your account, and then  
9 all of a sudden, you've got an e-mail account.

10                  Google has all kinds of other services.  
11 They have a map service. You can go on to Google, and  
12 if you're trying to find out how to get from Point A to  
13 Point B, and you haven't been there before, you click on  
14 the map service, and it will give you directions and a  
15 map for free.

16                  Most of the products -- most of the  
17 services that Google provides for internet users, like  
18 you and me, it provides for free.

19                  Now, how does it do that? It does that  
20 because it also manages advertising. So when you do a  
21 search, you'll see some what are called sponsored links.  
22 And it makes money when internet users, like you and me,  
23 click on those links.

24                  Now let's go to the demo slide 3,  
25 Charles.

1                   So Google was started by two grad  
2 students in Stanford University, Sergey Brin and Larry  
3 Page, and it was actually started in a garage, Susan  
4 Wojcicki's garage, and there's a picture of it right  
5 there.

6                   There's Sergey Brin and Larry Page. They  
7 were just students at Stanford at the time, and they had  
8 an idea for a way to organize information on the  
9 internet.

10                  The internet is this vast cyberspace  
11 area, and it's hard for people to get to where they want  
12 to go. And they came up with an idea to organize it and  
13 allow people to efficiently search for what they wanted.  
14 And they created what's called the Google search engine.

15                  Let's go to the next slide.

16                  By 2000, Google had a search engine that  
17 people could use, and it looked like this. You've  
18 probably seen it before, if you've ever gone to Google.  
19 By 2000, they were successful enough that they moved to  
20 Palo Alto -- to an office. They could afford an office  
21 at that point, and they moved to Palo Alto.

22                  And let's go to the next slide.

23                  And they launched something called  
24 AdWords. And this was the -- you remember Mr. Tribble  
25 said there's one thing that's not being accused here,

1 and this is the AdWords system.

2           And the way the AdWords system work --  
3 let's go to the next slide -- is you can type in a  
4 search -- and I'll just use this pointer here -- type in  
5 a search, so, for example, Mavericks, click the button,  
6 and then you get this page here. And on the page, you'd  
7 get search results, things you might want to click on  
8 when you're searching for Mavericks.

9           And these are actual websites. They're  
10 not advertisements. But then over here on this side, it  
11 says sponsored links. You see that? And these are  
12 advertisements.

13           And if you click on this, then you'd --  
14 it would take you to an ad site or to another website  
15 that wanted you to buy some products or something, and  
16 every time an internet user like you or me would click  
17 on this, then Google would make some money on  
18 advertising. And that was called AdSense for Search.

19           Now, that product is not accused here,  
20 but that was the first big search -- first big  
21 advertising product that Google had.

22           Now let's fast-forward to 2002. AdWords  
23 for Search had become successful. It went from 350  
24 advertisers to thousands of advertisers. And at that  
25 point in 2002, Google came up with another idea. Let's

1 match ads, relevant ads, to actual web pages.

2           So what's the difference? Well, here  
3 you're doing searches, and you have sponsored links.  
4 For this new idea, which is called AdSense for Content,  
5 it would apply if you already knew the website that you  
6 wanted to go to.

7           Maybe it was on one of your favorite  
8 links or you actually knew the URL, the address, and you  
9 could type it in, and you would just go to the website.  
10 And this was a system that would manage ads in that  
11 situation.

12           Let's go to the next slide.

13           So this was called AdSense for Content.  
14 Now, AdSense for Content was an ingenious new  
15 technology. And how it worked is, Google would -- there  
16 would be publishers on the website.

17           Publishers are just anybody. It could be  
18 you, if you had your own website. It could be a big  
19 corporation that had its own website. But it's people  
20 who have websites that have content, what's called  
21 content, information on the web.

22           And Google would ask these publishers, if  
23 they wanted to participate, to put a piece of Google's  
24 computer code on their website. And then if an internet  
25 user went to that website, Google would analyze the

1 actual text on the website, what's called the content of  
2 the website, and figure out what was being said on that  
3 website.

4           And then Google would take its database  
5 of ads that it had, and it would go through a complex  
6 algorithm and figure out which of the ads are relevant  
7 to the actual text on the website. This is called  
8 contextual targeting.

9           Let's go to the next slide, please.

10           So this is an example of AdSense for  
11 Content. This would be the publisher, bass fishing and  
12 here would be the content. This is the actual page that  
13 an internet user would go to read.

14           Now, this could change from day to day.  
15 It's whatever it is on that site. And these -- the end  
16 result is, these are the ads that Google would serve,  
17 and you see they all relate to fishing.

18           So here, the website is bass fishing, the  
19 content is fishing, and Google would figure out that's  
20 what the website was and then serve ads relating to the  
21 same subject matter. No one had ever done this before.  
22 This was something brand new that Google did.

23           Let's go to the next site -- next slide.

24           So let me try to show you how it works  
25 through a demonstrative here. So step one, I go to --

1 I'm a user. I go to this website. This all happens in  
2 a fraction of a second, so you don't even see it with  
3 your eyes.

4 But I go to this website as an internet  
5 user, and then the next thing that happens -- go ahead,  
6 Charles -- is Google would analyze, read the content  
7 that's actually on the web page.

8 Next. Next slide.

9 And then it would determine these are the  
10 subject matters that are on that website. It would  
11 figure that out.

12 Next.

13 Then Google would go to its ad database.  
14 And here -- this is just a representation of all the ads  
15 that are potential candidates in this database, and it  
16 would look for ads that are relevant to these subjects.

17 Go ahead.

18 And it would figure out, here are ads  
19 that are relevant, okay? But that's not all this system  
20 would do. It's got another step. It's called an  
21 auction.

22 Let's go to the next step.

23 Then once it determined which of these  
24 ads is relevant, Google would then conduct an online  
25 auction, and it would look at a number of factors, one

1 of which is how much each of the advertisers bid to be  
2 served ads by Google.

3 Go ahead.

4 And then only a few of those ads would  
5 win the auction, okay?

6 And then the next step.

7 And then after all that process, Google  
8 would take these winning ads that match the content of  
9 the site and won the auction, and then those would be  
10 placed into that sponsored link ads by Google category.  
11 This all would happen in (snaps fingers) a fraction of a  
12 second.

13 So if you have a fast enough internet  
14 connection, you wouldn't even see it. The pages come  
15 up, boom, like that.

16 But all of these processes went through.  
17 No one had ever done this before. The patents in this  
18 case don't talk about doing this. This is -- this is  
19 very sophisticated technology that Google developed.

20 It was also win/win for everyone. Users  
21 would see the ads targeted to what they were interested  
22 in. So you see, I'm interested in fishing, I'm going to  
23 be more likely to be interested in these ads because  
24 they're -- they concern fishing instead of Viagra or  
25 some other ad you get inundated with that you don't

1 like.

2                   So users liked it; advertisers liked it,  
3 because it increased the likelihood that users will  
4 click on their ads, so their advertising is more  
5 successful.

6                   And the publishers, the bass fishing  
7 people like it for the same reason. Because they make  
8 money every time an ad gets clicked on, because Google  
9 collects that money from the advertisers and gives the  
10 vast majority of it back to the web publishers.

11                  They're like an auctioneer. They keep a  
12 commission, but they give the most of it back to the  
13 publishers.

14                  So this is -- this is the accused  
15 technology. It's called AdSense for Content. This was  
16 created years before the patents at issue in this case  
17 were published -- or issued. Excuse me.

18                  The evidence shows that Google  
19 actually -- will show that Google itself obtained its  
20 own patents on its contextual targeting technology. And  
21 the patents issued only after this had already become  
22 very successful.

23                  It's important to note that the success  
24 of AdSense for Content has nothing to do with the  
25 patents in this case. Mr. Tribble didn't really



1 explain, I don't think, what was new and unique about  
2 its patents other than to say it's centralized.

3 But this isn't a success, because there  
4 was a centralized controller. This isn't successful  
5 because it allowed an advertiser to go to one place,  
6 which is what the patents talk about.

7 AdSense for Content was successful  
8 because it came up with a revolutionary, new technology  
9 for reading web pages, matching them to relevant ads,  
10 conducting an auction, and then placing those ads. A  
11 super complex system that had never been done before and  
12 is not talked about in the patents. So that's Google.

13 Now, real quickly, let's talk about  
14 Function Media's patents.

15 Let's go to Slide 15.

16 Now, Mr. Tribble talked a lot about the  
17 patents, but he never went through the actual claims.  
18 And your job is to go through the claims, look at the  
19 elements, and apply them to the accused technology.

20 So let's look at the claims. And I'm  
21 summarizing here for brevity, but let's go.

22 This is Claim 1 of the '025 patent. It's  
23 the same representative claim that Mr. Tribble used.  
24 This claim is very similar to all the other claims, and  
25 we have, as I said, three reasons we think we don't

1 infringe, and it applies to all the claims, including  
2 this one. So we'll use this one as a representative  
3 example.

4           The claims, basically, to help you  
5 understand it, talk about essentially three things.  
6 The first is what's called a first interface. And in  
7 the first interface is a subject called Media Venues  
8 Input Presentation Rules. Well, how can you translate  
9 that into English?

10           What that is, it -- an interface is a  
11 software program that these media venues can use to  
12 interface with the system. And the media venues is a  
13 fancy word for these publishers, website owners.

14           So the first part of their patent is  
15 having this interface for publishers, otherwise known as  
16 media venues, with input presentation rules.

17           What are presentation rules? How big  
18 your ad should be. Presentation refers -- basically,  
19 that translates into an ad. How big your ad is, what  
20 background color it should have, those are presentation  
21 rules, okay?

22           Then the next part is the second  
23 interface here. And the second interface is for the  
24 sellers. In our case, the sellers are called  
25 advertisers.

1                   So it's an interface that the advertisers  
2 will have on their computer. And this element talks  
3 about sellers are advertisers inputting information to  
4 select internet media venues. What does that mean?  
5 They're inputting information to select publishers,  
6 websites.

7                   And then secondly, this says, in the  
8 second interface, that the advertisers input information  
9 to create an electronic advertisement.

10                  So this talks about a second interface  
11 where the advertisers do two things: They input  
12 information to select these websites, and they input  
13 information to create their advertisements, okay?  
14 And then the third big piece of this -- and again, I'm  
15 summarizing here -- is a computer controller. A  
16 computer controller processes and publishes electronic  
17 advertisement.

18                  So there's a centralized controller, and  
19 what it does is, it processes and publishes the ads to  
20 these websites. It publishes them to the selected media  
21 venue.

22                  So let's walk through an illustration to  
23 help understand how that works, okay?

24                  So these are media venues, travel.com,  
25 outdoors.com, and they're inputting presentation rules,

1 the ad size, font, color, border, and it goes to this  
2 central controller. So they input that into there.

3           The next step in the patent is, you have  
4 the seller or advertiser. And the seller and  
5 advertiser -- Charles -- it does two things: It inputs  
6 information to select one or more of the internet media  
7 venues, one or more of these guys, and it inputs  
8 information to create an ad that's customized to each of  
9 the selected internet media venue presentation rules.

10           So it has to make its ad customized to  
11 the rules that each of these guys have. So, for  
12 example, say travel.com says, your ad has to be purple,  
13 and outdoor.com, your ad has to be green. It creates a  
14 different ad for each of the different media venues in  
15 accordance with the presentation rules.

16           The next step.

17           And that goes to central controller, too.

18           Next.

19           And then the last step is, the computer  
20 controller processes and publishes those ads and  
21 publishes them to the websites.

22           So it processes and publishes the lose  
23 weight fast ad in purple to travel.dot, in accordance  
24 with its presentation rules, and processes and publishes  
25 the lose weight fast advertisement to the website

1 outdoors.com.

2                   So that's, basically, a simplification,  
3 but it's, basically, what the patents talk about.

4                   That's their invention.

5                   All right. Now let's talk about  
6 noninfringement.

7                   The evidence will show that Google does  
8 not infringe this claim or any of the other claims for  
9 three reasons.

10                  In order for you to find infringement,  
11 you have to remember it's Function Media's burden to  
12 prove that Google infringes each and every element of  
13 the claims.

14                  So we were just looking at the claims.  
15 They have to show each and every one of those elements  
16 we went through are infringed.

17                  It's not enough for Function Media to  
18 show that the accused products resemble what the patent  
19 is talking about. It's not enough if they're similar or  
20 if you think there's an overlap.

21                  Your job as jurors is to take each claim  
22 and ask the question, did they prove that Google meets  
23 that?

24                  And here, if there's just one claim  
25 that's not met, you have to find noninfringement.

1                   Now, the evidence will show that Google  
2 does not infringe for three reasons. Let's go through  
3 them.

4                   Let's go to 21.

5                   Okay. Let's start with this element.  
6 This is from the claims. It says, the seller is  
7 prompted to input information to create an electronic  
8 advertisement for publication to the selected internet  
9 media venues.

10                  Next slide.

11                  The Court in this case has told us what  
12 that means, and the Court said, the term create an  
13 electronic advertisement for publication to the selected  
14 internet media venues means create an electronic  
15 advertisement for publication in a form customized to  
16 each of the selected internet media venues presentation  
17 rules.

18                  What does that mean? That means, to  
19 translate that into layperson's terms, when the seller  
20 here, the advertiser, is creating electronic  
21 advertisement, he or she has to do so in a way that's  
22 customized to each of this selected publishers' internet  
23 media venues presentation rules.

24                  It has to be customized to each website  
25 that the advertiser selected. That's what this claim

1 is.

2 Next slide.

3 Now, the Google system, we'll present  
4 evidence, it doesn't do that. Advertisers can't do  
5 that.

6 Here in the Google system -- let's go to  
7 the next -- go ahead -- what an advertiser can do is  
8 input ad information, key words, placements, and bids.

9 Next slide.

10 The evidence will show that an advertiser  
11 on Google's AFC system cannot change the ad to conform  
12 to the specific presentation of rules of the websites.  
13 The advertiser cannot change the color of their ads.  
14 They cannot change the font of their ads. They cannot  
15 change the borders or settings.

16 Just one generic submission, not  
17 customized, is what the seller does. Doesn't use this  
18 claim language.

19 Go ahead to the next.

20 So they submit that, and it's the same no  
21 matter what the -- where this is published.

22 Next -- next, please.

23 So, again, Google does not permit  
24 advertisers to input information to create an electronic  
25 advertisement customized to each of the selected

1 internet media venue presentation rules. That's number  
2 one, the first reason that Google doesn't infringe.

3 Let's go to the second reason. Same  
4 claim, we're going through -- you're going to have to go  
5 through and look at each of these elements and decide if  
6 they're met.

7 Second reason, this is a computer  
8 controller. It says that the computer controller of the  
9 computer system processes and publishes the electronic  
10 advertisement to one or more of the selected internet  
11 media venues.

12 Again, translating it into layperson's  
13 terms, this central controller processes and publishes  
14 the ad to one or more of the selected websites. They  
15 say media venues. It's a publishing website, okay?

16 The Court order, the Court's construction  
17 of what this means, says this term -- the term means  
18 placing or making available the customized electronic  
19 advertisement within the framework of and at each of the  
20 internet media venues, at each internet media venue.  
21 So this element requires that the central computer  
22 publish the ad to the website. Now, we'll see Google  
23 doesn't do that. It doesn't do it at all.

24 Let's go to the next slide.

25 The way Google works is, you and I, we're



1 internet users, right? We get on to the internet, and  
2 let's say we go -- we're interested in the news because  
3 of the tragedy that we've been reading about. So we go  
4 to CNN to find out the latest, okay?

5 So you type -- you happen to have it on  
6 your favorites list. You don't need to do a search.  
7 You just type it in, and it goes straight to the CNN  
8 website.

9 And what happens in a fraction of a  
10 second in the Google system is the site comes down to  
11 your computer, but guess what? It's got a blank where  
12 the ads are supposed to be, okay?

13 And if you have a slow enough connection  
14 or if your internet is not doing so well, you may have  
15 seen that. Sometimes your page loads, and there's a  
16 blank, and it takes a minute, and then the ad comes up.  
17 But if you have a fast one, you don't see it. But  
18 that's how it works. That's the first step.

19 Next slide.

20 Then what Google does is, it does all  
21 that contextual targeting we talked about and finishes  
22 that. And then what does it do when it's finished; it's  
23 decided what ads it wants to place? Does it publish  
24 them to the website? No.

25 What Google does is it publishes them

1 directly to you, publishes them directly to your browser  
2 on your internet, to every one. It never publishes the  
3 ad to the website.

4 Well, the claim we just saw requires  
5 publication to the website. In fact, the website  
6 doesn't even know what ads are being displayed on its  
7 web pages. Google handles all of that.

8 So that element is not met.

9 Let's go to the third element.

10 There's a third reason why Google doesn't  
11 infringe, and that relates to these two elements here.  
12 The first says -- and this is the second interface we  
13 looked at -- the seller is prompted to input information  
14 to select one or more of the internet media venues.  
15 Seller is prompted to input information to select the  
16 websites it wants to advertise on.

17 And then later, it says -- after this  
18 processing and publishing is done, it says: Whereby the  
19 electronic advertisement is displayed on each, each of  
20 the one or more of the selected internet media venues.  
21 That doesn't happen on the Google system.

22 Go to the next slide, Charles.

23 So here's how Google works.

24 Go ahead.

25 The Google puts -- and again, as we saw,

1 puts in the ad information, key words, placement, bids.

2 Next.

3 Goes into Google.

4 Next.

5 Google has the submission from that

6 advertiser. What does Google do with it?

7 Go to the next slide.

8 It puts it in its database.

9 Go ahead.

10 Among all these other ads, okay? It

11 doesn't just take the ad that selects -- the selection

12 that was made and just send it to the publishing

13 website. No. If that ad wants to get displayed, it has

14 to go through the process you looked at earlier. It's

15 one of millions of potential ads.

16 Next step.

17 And you remember, the next step is the ad

18 has to be selected for relevance. So all these other

19 ads, they don't get selected because they're not

20 relevant.

21 In this example, the ad that we're

22 looking at did get selected, so it passed the first

23 step.

24 Go to the next step.

25 But then it's got another hurdle. It's

1 got to win the auction. So even though it's relevant,  
2 if it doesn't win the auction, it's not going to get  
3 displayed.

4 So go to the next slide.

5 So in this case, in this example, it  
6 didn't bid enough money, so it doesn't get selected.

7 Next slide.

8 So what happens is, even though the  
9 advertisers said, I want to be on this website -- go  
10 ahead -- it doesn't get displayed. Other ads get  
11 displayed. It loses.

12 THE COURT: You've got 10 minutes  
13 remaining.

14 MR. VERHOEVEN: Thank you, Your Honor.

15 So this is the third reason why Google  
16 doesn't infringe. On the Google system, there is no --  
17 you don't just select a website and you get published  
18 there. You have to be selected for relevance, and then  
19 you have to win the auction.

20 There's no -- you might or you might not.  
21 But it's not the case that you select a website, and  
22 then you get processed and published, and your ad gets  
23 displayed on each of the websites you selected. It  
24 doesn't happen that way.

25 So for those three reasons, Google

1 doesn't infringe. We're going to present evidence on  
2 this, and we are confident that once you carefully look  
3 at the elements, you'll find there's no infringement.

4           Now, we also contend that the Function  
5 Media patents are invalid. And I'm not going to go  
6 through the slides on this, because I don't have enough  
7 time, but we have evidence that both AdForce and  
8 DoubleClick, as I said, were doing the same thing that  
9 Function Media was doing before Function Media did it.

10           And we're going to present expert  
11 testimony; we're going to present documents from these  
12 systems; we're going to present witnesses who actually  
13 wrote the AdForce system, worked on the AdForce system,  
14 work on the DoubleClick system.

15           You can look into their eyes and assess  
16 for yourself, did they do it? Did they do it before  
17 these folks did it? And we think that you will conclude  
18 that they did.

19           Now, it's important for you -- on this  
20 invalidity analysis, under the law, for you to  
21 understand that it doesn't matter whether or not AdForce  
22 obtained a patent on its system. All that matters is  
23 whether it did it first.

24           Now, some people think, well, the first  
25 person at the Patent Office wins. That's not the law.

1 You're only entitled to a patent if you were the first  
2 person to do it.

3           It doesn't matter -- if somebody else did  
4 it before you and what you're doing is not new or  
5 unique, you're not entitled to a patent. It doesn't  
6 matter that the other person filed for their own patent  
7 or not. That's irrelevant.

8           What matters is, did they do it first?  
9 And we're going to present evidence that they did do it  
10 first.

11           Now let me talk about damages for a  
12 minute. We don't think any damages are appropriate in  
13 this case. We think that Google does not infringe, and  
14 we intend to prove it to you.

15           We also think that the patents are  
16 invalid, and we intend to prove that to you. The Patent  
17 Office didn't know about the art we're going to show  
18 you. But you might disagree with us, and if you do, we  
19 need to talk about damages.

20           For damages, the Court will instruct you  
21 that if you find there's liability, that the appropriate  
22 measure of damages is a reasonable royalty. Emphasis on  
23 reasonable.

24           How do you determine that? Well, the  
25 Court will tell you that you have to imagine a

1 hypothetical negotiation. And that negotiation will be  
2 between Function Media -- actually, between Mr. Dean and  
3 Ms. Stone on the one hand and Google on the other.

4           And you're supposed to pick a specific  
5 time for that hypothetical negotiation. That's July of  
6 2007 when the patents issued. And you need to imagine  
7 that Mr. Dean and Ms. Stone are negotiating with Google  
8 and try to figure out what you think would be a  
9 reasonable outcome of that negotiation. That's the  
10 test.

11           Now, Google says -- Google. I apologize.  
12 Mr. Tribble says that the outcome of that negotiation  
13 was -- would be that Google would say: You can have 65  
14 percent of all the profit that we've made doing this, 65  
15 percent.

16           Now, we contend that's simply not  
17 reasonable. Google spent a lot of money and a lot of  
18 time developing these systems well before the patents  
19 issued.

20           The evidence will show that Mr. Dean and  
21 Ms. Stone weren't able to write a software program that  
22 practiced their patents. They didn't know how to write  
23 code. They had to have somebody else to help them do  
24 it. And then even, it didn't work.

25           The evidence will show that they were

1 unable to write this customization they were talking  
2 about. They didn't even have any software to do that.  
3 They couldn't do it. The evidence will show the part  
4 that they did develop, they tried to sell, and they  
5 tried to give away, and no one wanted it.

6           In light of that and in light of the  
7 creativity and the contextual targeting that has nothing  
8 to do with the patent that was the reason for the  
9 success of AdSense for Content, we believe you'll  
10 conclude that their number is grossly exaggerated.

11           Now, I want to conclude by saying one  
12 last thing. This not a case about Google copying  
13 somebody's patent. Google -- it's undisputed, Google  
14 had no knowledge of these patents, no knowledge  
15 whatsoever.

16           The evidence will show the first time  
17 Google learned about these patents was when Function  
18 Media sued Google. And guess when they sued them? The  
19 first day their patent issued.

20           The evidence will show that Mr. Dean and  
21 Ms. Stone knew about Google and suspected they might be  
22 infringing in 2005. Did they pick up the phone? No.  
23 Did they send a letter? No. Did they try to contact  
24 Google at all? No. What did they do? They waited, and  
25 on the first day their patent issued, they sued.



1                   Is that conduct that deserves \$600  
2 million in damages? We think no.

3                   Would Google have agreed, under those  
4 circumstances, to give away 65 percent of its profits  
5 from its hard work that it did without knowing anything  
6 about these patents? We think you'll conclude no.

7                   So I thank you very much for listening to  
8 me and for your service as jurors. I'll have one more  
9 chance to talk to you at the end of the case after the  
10 evidence has been presented, and I look forward to doing  
11 that. Thank you for listening.

12                  THE COURT: All right. Thank you,  
13 Counsel.

14                  Ladies and Gentlemen, we're going to take  
15 our morning recess at this time. Just over 20 minutes.  
16 Be back ready to come in the courtroom at 10:35, and  
17 we'll start at that time with the first witness.

18                  Remember my prior instructions, and don't  
19 talk about the case.

20                  COURT SECURITY OFFICER: All rise.

21                  (Jury out.)

22                  THE COURT: All right. Y'all have a  
23 seat.

24                  The arm's-length rule is in effect.  
25 Stay within an arm's length of the podium, please,

1 Mr. Verhoeven.

2 MR. VERHOEVEN: I apologize.

3 THE COURT: Well, it's okay. I'm just --  
4 Judge Ward is kind enough to let us use his courtroom  
5 for this case. I understand it's a big case for both  
6 sides. But if you poke a hole in his screen, he's going  
7 to send us downstairs, okay?

8 So I don't know the -- in addition to  
9 imposing other penalties, okay? So please be mindful of  
10 the screen when you're using it.

11 MR. VERHOEVEN: So I shouldn't be  
12 pointing up to the screen then?

13 THE COURT: Well, I don't mind if you  
14 point up to it. I just don't want you to hit it too  
15 hard and poke a hole in it.

16 MR. VERHOEVEN: Okay. Thank you.

17 THE COURT: Okay. Come back and be ready  
18 to start at 10:35. Court's in recess.

19 COURT SECURITY OFFICER: All rise.

20 (Recess.)

21 COURT SECURITY OFFICER: All rise.

22 (Jury in.)

23 THE COURT: Please be seated.

24 Counsel, approach.

25 (Bench conference.)

1 THE COURT: All right. Just for purposes  
2 of the record, I'm exempting expert witnesses from the  
3 Rule -- the prosecution of the Rule and the client  
4 representatives that we discussed before opening  
5 statement.

6 But it's the responsibility of the  
7 lawyers to keep anyone out that would be covered by the  
8 rule, okay? I can't police who comes in and out of the  
9 courtroom. I just -- and I'll -- you know, I always let  
10 them stay for opening statement.

11 I don't know if anybody's out there, but  
12 it's y'all's responsibility, okay?

13 MR. VERHOEVEN: Yes, Your Honor.

14 MR. NELSON: Thank you, Your Honor.

15 THE COURT: Okay.

16 (Bench conference concluded.)

17 THE COURT: Plaintiff may call its first  
18 witness.

19 MR. NELSON: Yes, Your Honor. Plaintiff  
20 calls Michael Dean.

21 THE COURT: Mr. Dean, if you'll have a  
22 seat right there. Try to keep your voice up and speak  
23 into the microphone for me, okay?

24 THE WITNESS: Yes, sir.

25 MICHAEL DEAN, PLAINTIFF'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. NELSON:

Q. Good morning.

A. Good morning.

Q. Please introduce yourself.

A. My name is Michael Dean.

Q. Mr. Dean, where do you live?

A. I live in Tyler, Texas.

Q. How long have you lived in Tyler?

A. We moved there in 2004.

Q. And --

A. So five years.

Q. And how long have you lived in Texas?

A. We moved to Texas in 1997.

Q. You said we. Who is the we?

A. Lucinda Stone, my wife.

Q. Where did you go to high school?

A. Manteca, California.

Q. And is that where you're from?

A. Yes.

Q. Now, before -- we're going to talk a little bit more about your background and these patents, but I want to ask you a couple of questions first about what Google's counsel, Mr. Verhoeven, said in his opening statement.

1           He said that Google had this new idea in 2002.  
2 In 2002, Mr. Dean, was this automated customization a  
3 new idea?

4           A.     Absolutely not.

5                     MR. VERHOEVEN:  Objection, Your Honor.  
6 May I approach?

7                     THE COURT:  Yes.

8                     (Bench conference.)

9                     MR. VERHOEVEN:  There's a motion in  
10 limine granted on opinion testimony, Your Honor.

11                    THE COURT:  It's overruled.

12                    And, listen, we're not going to -- I  
13 mean, I understand that was a limine point, but we're  
14 not going to try this case up here at the bench.  So to  
15 the extent you can make those objections from counsel  
16 table, I expect you to do it.

17                    MR. VERHOEVEN:  Yes, sir.

18                    (Bench conference concluded.)

19           Q.     (By Mr. Nelson) Was this automated  
20 customization a new idea in 2002?

21           A.     No, it was not.

22           Q.     Mr. Verhoeven also stated that Google's  
23 success has nothing to do with the patents in this case.  
24 In your opinion as the inventor of the patents here, is  
25 it possible to have an automated customized system

1 without these patents?

2 A. No, it is not.

3 Q. Mr. Verhoeven also stated that you were  
4 considering suing Google in 2005.

5 Just so the record is clear, were these  
6 patents that we're talking about today, had they issued  
7 in 2005?

8 A. No. These patents did not issue until July of  
9 2007.

10 Q. Mr. Dean, could you please explain briefly why  
11 you are here today suing for patent infringement?

12 A. Yes. The -- the patents that contain  
13 fundamental core -- core inventions to a process are  
14 rarely ever licensed outside the scope of litigation. I  
15 believe that if we had contacted Google in California,  
16 they would have filed suit in California in their  
17 backyard, and I -- it would just be prohibitively  
18 expensive for us to have allowed that to happen.

19 MR. VERHOEVEN: Objection. No  
20 foundation. Move to strike.

21 THE COURT: All right. Overruled.

22 A. So that's the reason we are here today.

23 Q. (By Mr. Nelson) Thank you, Mr. Dean.

24 Now, we talked about -- we left off and you  
25 had graduated high school in the late '60s.

1           After you graduated high school, what did you  
2 do next?

3           A.    After high school, I went -- a year, year and  
4 a half of -- excuse me -- a year and a half or so of  
5 college, and then I joined the Army.

6           Q.    What year did you join the Army?

7           A.    1969.

8           Q.    Was that during the Vietnam war?

9           A.    Yes, it was.

10          Q.    Did you volunteer for the Army in 1969?

11          A.    Yes, I did.

12          Q.    Were you an enlisted man?

13          A.    Yes. I started out as an enlisted man and  
14 became an officer.

15          Q.    Did you receive any specialized training in  
16 the military?

17          A.    Yes, I did. I started out with infantry  
18 training and was selected to attend Engineering OCS;  
19 that's Engineering Officer Candidate school.

20                After Engineering Officer Candidate school, I  
21 was commissioned as a second lieutenant in the Army  
22 Corps of Engineers.

23                After that, I was sent to a military  
24 intelligence course, where after graduating from that, I  
25 had a dual specialty in the military of engineering and

1 also military intelligence.

2 After that, I was given orders to go to  
3 Vietnam as an advisor, and the Army gave me specialty  
4 training to prepare me to be an advisor, several  
5 courses; the primary one being the Defense Language  
6 Institute to learn to speak Vietnamese.

7 Q. Did you actually go to Vietnam?

8 A. Yes, I did.

9 Q. Did you see combat there?

10 A. I was in the front-line positions the whole  
11 time I was in Vietnam.

12 Q. What decorations, if any, did you receive?

13 A. I was awarded a Bronze Star. I was awarded an  
14 Air Medal. That was given for 100 combat assaults. I  
15 was awarded a Vietnamese Cross of Gallantry with Silver  
16 Star, and I was awarded a combat infantry badge referred  
17 to as a CIB.

18 Q. When did you return from Vietnam?

19 A. I returned home in 1972.

20 Q. Where did you return to?

21 A. California.

22 Q. What did you do when you got back?

23 A. When I got back, I joined the Army Reserve and  
24 got into construction.

25 Q. What did you do as part of the Army Reserves?



1           A.     In the Army Reserves, I was -- I was a company  
2 commander of a combat engineer unit.

3           Q.     Did you attend any more college besides the  
4 year or so you had attended before you went to Vietnam?

5           A.     Yes. After I -- after I got back, I attended  
6 probably a year, a year and a half, but I didn't have  
7 the money to attend full-time. I had to work and make a  
8 living.

9           Q.     I'm going to skip ahead a few years. When did  
10 you first become interested in the internet?

11          A.     The first time I discovered the internet was  
12 in 1994.

13          Q.     How did you become interested in the internet?

14          A.     The -- I was in the -- I was in the process of  
15 exploring a bulletin board system, which was the old  
16 electronics bulletin boards that they had in those days,  
17 and I was trying to -- I was looking at setting up an  
18 advertising system, a local advertising system for the  
19 Santa Cruz community.

20                 And in doing this, we started testing the  
21 internet, abandoned the concept of the electronic  
22 bulletin board. And I've been hooked on the internet  
23 ever since.

24          Q.     Could you please describe for the jury the  
25 state of internet technology as it existed in this 1994

1 timeframe?

2 A. In 1994, the -- the -- the internet was in its  
3 infancy. It was -- it was nothing like it is today.  
4 There was no broadband. All connections were done with  
5 a dial-up modem. You may have had a 144 or 288 dial-up  
6 modem. The browsers were slow. They'd come in all  
7 pixilated. There was no Internet Explorer. There was  
8 no Netscape. The browser we used in those days was  
9 called Mosaic.

10 Q. Was there a Google?

11 A. No.

12 Q. What kind of internet business were you and  
13 Ms. Stone interested in back then?

14 A. At that point in time, Lucinda and I quickly  
15 embraced the internet. And what we saw as the huge  
16 potential of the internet was to provide small  
17 entrepreneurs, small companies, small sellers as we saw  
18 them, and to provide them a platform that they could  
19 promote their products or services all across the United  
20 States and do it electronically and do it frequently.

21 Q. Did you obtain an internet address for that  
22 business?

23 A. Yes, we did.

24 Q. What was the name of that internet address?

25 A. It was [www.virtualcities.com](http://www.virtualcities.com).

1           Q.    What did you do first at that internet  
2 address?

3           A.    At first, what we did was we explored the  
4 various types of sellers. And we were trying to look  
5 for that perfect market. And in doing that, we came  
6 upon the concept of doing a directory for bed and  
7 breakfasts, country inns, and small hotels.

8                   And those owner/operators, those mom-and-pop  
9 operations, if you will, they could be the poster child  
10 for what -- what has really made the internet great.  
11 They had -- they had limited financing for their -- for  
12 their ad campaigns. They were -- they were local in  
13 their -- in their position, but they needed to spread  
14 their message nationally to influence those people that  
15 were traveling to their area.

16                   So it was -- we considered it a perfect fit  
17 for what the internet was becoming and how -- and how we  
18 knew that the internet would grow and thrive.

19           Q.    Was it successful?

20           A.    Yes, it was. We -- we were one of the first  
21 ones to start up. We currently -- I believe we're  
22 currently the longest running bed and breakfast  
23 directory of that kind on the internet.

24                   We -- we were recognized and recommended by  
25 state associations all across the United States, by the

1 national association, PI. It was very successful.

2 Q. Let's move down the road a little bit. When  
3 was the first time that you started thinking about what  
4 ultimately became the inventions in this patent -- in  
5 these patents here?

6 A. The first time was 1997, late 1997.

7 Q. Could you please describe for the jury how you  
8 conceived of your inventions at issue in this case?

9 A. What we conceived of was creating a single  
10 site where these individuals that I spoke of -- that not  
11 only bed and breakfasts but all sorts of sellers in all  
12 sorts of industry that needed to reach out and spread  
13 their information, to gather -- gather clients and  
14 customers, we envisioned a site where they could come to  
15 one location, and at that location, they could input the  
16 information that they wanted their message to be, the  
17 information of what they had to sell, what they had to  
18 promote.

19 They could then input the information of where  
20 they wanted these presentations to go and press a single  
21 button, and the whole system would take care of  
22 distributing those in a customized format to all of  
23 these locations that they wanted to advertise on.

24 Q. Was the ease of use something that you were  
25 considering?

1           A.     Very, very much so, because the -- the -- in  
2 1997, the internet advertising was very difficult for  
3 these small -- small businesses, because they would  
4 have -- they would have to figure out where they wanted  
5 to put their presentations or their advertisements.  
6 They would have to contact those, negotiate a contract  
7 or agree to a standard contract. They would then have  
8 to -- have to get the -- get the rules, the presentation  
9 rules or the requirements for those advertisements,  
10 because the websites just wouldn't put up anything. So  
11 they had to get that.

12                 Then they had to design the ad or pay someone  
13 else to design the ad or submit required information.  
14 It was -- it was a very frustrating process, a very long  
15 process for these -- for -- for the innkeepers we were  
16 dealing with, and -- and by our analysis for everyone  
17 trying to get their message out.

18           Q.     How did you and Ms. Stone work together in  
19 coming up with these inventions?

20           A.     Yeah, that's -- that's rather -- that's rather  
21 humorous. At the time -- at the time that we started  
22 working on this, Lucinda and I were living in San  
23 Francisco, and we had -- we were working out of our  
24 house.

25                 And the -- we were in a 1920s house, small

1 bedrooms, rather unusual configuration by today's  
2 standards, but -- so she had her office in one bedroom  
3 and I had my office in a second bedroom. And if you  
4 opened the office doors, you could -- not office  
5 doors -- excuse me -- the closet doors of the closet in  
6 that bedroom, you could see straight through to the  
7 other room.

8           So we would end up -- we arranged our desks so  
9 that we would end up sitting there, and when we started  
10 talking and brain-storming, I would turn towards her and  
11 she would turn towards me, and we would be talking  
12 through this closet.

13           So it -- it struck us as a bit unusual, but we  
14 had a lot of good brain-storming sessions through that  
15 closet.

16           Q.    You mentioned that some of your clients had  
17 some frustrations. These were advertiser clients?

18           A.    Yes, they were.

19           Q.    Could you please describe in a little more  
20 detail the frustrations that these seller-side  
21 advertisers were facing in this timeframe?

22           A.    Yes. The -- the advertisers had no central  
23 location to go to to -- in order to manage their ad  
24 campaigns. They would get no help.

25                   It was -- it was always a case of -- of a

1 piecemeal operation; that they would have to manage all  
2 the contacts; that they would have to intimately have a  
3 relationship and know with each and every place that  
4 they were going to advertise -- they wanted to advertise  
5 their bed and breakfast, and they had to know minutia  
6 detail.

7           Some sites will accept certain amounts of text  
8 plus an image. Some sites want more text. It was just  
9 very difficult and very frustrating for them.

10       Q.    Now, you mentioned that you were a web  
11 publisher; is that right?

12       A.    That's correct.

13       Q.    Was it important in coming up with these  
14 inventions that you were a web publisher?

15       A.    Yes. One of the things we brought to -- to  
16 this -- this brain-storming and this inventive process  
17 is that we were publishers. So we were seeing the flip  
18 side of the advertisers' difficulty, of that seller's  
19 difficulty. I mean, when you're dealing with your  
20 clients and they're frustrated, that's not good for  
21 anyone.

22           So we were -- we were having to deal  
23 one-on-one with each one of them. We were having to  
24 solve individual problems. Many times, they would be  
25 submitting material and they would have gotten the

1 standards mixed up with somebody else's standards. So  
2 we would have to go back to them.

3 We had to review every item that came in in  
4 order to make sure that the ultimate ad that we created  
5 was correct and accurate not only for their custom --  
6 their custom content and their custom message but also  
7 for -- for our standards that we were trying to maintain  
8 on that website as far as look and feel, as far as the  
9 design and style of our website.

10 Q. You testified about this at the very beginning  
11 of your testimony. But, Mr. Dean, please tell the jury  
12 whether you were aware of any type of automated  
13 customization that could access multiple websites before  
14 what you and Ms. Stone did?

15 A. No. There was absolutely nothing out there  
16 available that could take the raw data and generate  
17 custom ads that would satisfy the needs of a multitude  
18 of websites, to keep that look and feel, that design and  
19 style, and be true to what the -- what those website  
20 owners, those publishers, were trying to accomplish.

21 Q. Can I stop you there?

22 You mentioned the phrase look and feel. Can  
23 you please describe for us what you mean by the look and  
24 feel?

25 A. Yes. That's a -- that's a term used by



1 programmers and web internet publishers. And what we  
2 mean when we -- when we talk about that is that -- is  
3 that the design of it, the color combinations, the  
4 layout on the screen, the navigation through it.

5 And each publisher spends a huge amount of time and  
6 effort working on their site to try and perfect what  
7 they consider -- and this is an opinion that -- that no  
8 two publishers will agree on. But they try to perfect  
9 the perfect environment for the type of clients that  
10 they're going to attract.

11           They look at demographics on who they are.  
12 They study who's at their site. And they work very hard  
13 to maintain that look and feel consistency across their  
14 website.

15           Q. Does the look and feel allow the publisher,  
16 the web publisher, control over the appearance of his  
17 site?

18           A. Yes.

19           Q. In your experience as a website publisher, is  
20 the look and feel of a website important?

21           A. Yes. As I said, that's -- that's everything  
22 to a web publisher. They -- they're -- their whole  
23 mission in life is to build a better appearance and a  
24 better functionality for that website. That's all  
25 they've got to offer.

1           They've got -- all of them have lots of  
2 information. The question comes down to ease of use,  
3 consistency, how pleasing is it to the eye, how  
4 consistent, can you find the information.

5           Q.    Now, can you please describe for us what was  
6 your idea? What was your breakthrough here?

7           A.    The breakthrough on that was -- and it was  
8 probably through that -- I mean, it was through that  
9 closet, but the breakthrough was that we came -- we had  
10 the realization that these two objectives of the -- the  
11 seller wanting to get their message out and having a  
12 customized message and the website publisher's objective  
13 of maintaining that look and feel, of developing a  
14 consistency on their site, those weren't mutually  
15 exclusive.

16                We believed there was a way to more  
17 efficiently combine those objectives and allow for an  
18 even flow of work and a flow of these advertisements  
19 with much less anguish, you might say, on both sides.  
20 Yes.

21           Q.    Was your idea limited to just bed and  
22 breakfast sites?

23           A.    No, absolutely not. We -- we -- we started  
24 with the bed and breakfast site -- no. Excuse me --  
25 yes. We started with our bed and breakfast clients,

1 because we already had relationships with these clients.  
2 We understood the bed and breakfast industry, and we had  
3 good contacts.

4 But we viewed our patents and this patent,  
5 this invention that we had done, this system as being  
6 applicable to all internet advertising across a wide  
7 spectrum of almost any service, idea.

8 Whatever you wanted to promote, this would  
9 help promote it by getting it out and getting it into an  
10 acceptable format for those websites that were  
11 struggling, trying to bring in your advertisement, but  
12 by the same token, not violate their -- violate their  
13 look and feel and violate their -- what they were  
14 striving for.

15 Q. What did you do to implement these ideas?

16 A. In -- in early 1998, I went out and bought  
17 computer programming books. I enrolled in local -- at a  
18 local junior college in computer programming classes and  
19 started -- started programming these interfaces.

20 Q. Now, what happened after you started to  
21 program these interfaces and began attending these  
22 classes?

23 A. Well, I started attending the class -- or  
24 reading the books, attending the classes. And it was a  
25 very intense time, because I was on a -- on a mission to

1 learn this -- learn this.

2 And shortly after that, we hired a programmer,  
3 Mohammed Hasan, who had actually been an instructor at  
4 the -- the junior college, and we hired him as a  
5 part-time programmer to help me program that system. I  
6 mean, I was a novice programmer to start with, and I  
7 needed his experience and expertise.

8 Q. When did you hire Mr. Hasan?

9 A. That was May of 1998.

10 Q. Now, did all three of you, Ms. Stone,  
11 Mr. Hasan, and you -- all three of you work on the  
12 programming?

13 A. No. Lucinda doesn't -- does not program. She  
14 was very much -- she was running the business, and I was  
15 doing the programming, along with Mohammed Hasan. But  
16 somebody had to take care of the core business that we  
17 had while we were working on this project for the  
18 future.

19 Q. Now, I want to be very clear about this for me  
20 and the jury here.

21 Was Mr. Hasan involved in any way in coming up  
22 with the ideas that became these patents?

23 A. Absolutely not. We hired Mr. Hasan in -- in  
24 May of '98. It was certainly -- by April of '98,  
25 Lucinda and I had well mapped out and diagrammed how

1 this system was going to function and the intricacies  
2 and the interactions of the various pieces and the  
3 results that we wanted out of it.

4           So it was all mapped out. I had already  
5 been -- programming for a while on it, and then we hired  
6 Mr. Hasan.

7           Q. I think you just testified to this, but by  
8 April of 1998, had you and Ms. Stone come up with this  
9 idea of automatically formatting advertisements?

10          A. Yes.

11          Q. When did you start the patent application  
12 process?

13          A. We started the patent application process in  
14 April of 1999.

15          Q. And what happened? Can you describe that  
16 briefly?

17          A. Yes. We had -- we had essentially finished  
18 the program, and we were going back in and improving the  
19 efficiency. But the program -- the program was  
20 finished, and I -- I called a -- an attorney to ask him  
21 how could we protect this.

22                 We were very excited about it. We wanted to  
23 go out and show, and it -- and we felt we needed some  
24 sort of protection. In talking to him, he recommended  
25 that we file a patent application.

1 Q. When did you file your first patent  
2 application on these inventions?

3 A. The first patent application was filed in --  
4 on January 10th of 2000.

5 Q. You testified that you started programming and  
6 implementing these ideas in early 1998; is that right --

7 A. Yes.

8 Q. -- approximately?

9 Were those programs, implementations of the  
10 inventions described in your patents?

11 A. Yes, they were. This was -- was what you  
12 might call phase one of -- of the total invention. We  
13 had to address the need -- we first had to address the  
14 needs of the bed and breakfast clients that we were  
15 starting out with.

16 Q. Okay.

17 A. So that's where we started.

18 Q. Yes. So could you go into -- what was phase  
19 one?

20 A. Phase one was -- was -- we created a seller  
21 interface so that the bed and breakfast clients could  
22 enter all their information that was required for -- to  
23 create a presentation, transmit it.

24 We completed the central processor and the --  
25 and we -- we completed the presentation generation

1 program. That was the part that took the various  
2 standards that were required, combined them with the  
3 custom message from the -- the innkeeper, and then  
4 generated and placed that ad on the internet.

5 Q. Did you create a website that had this?

6 A. Yes, we did.

7 Q. What was the name of that website?

8 A. It was lodgingreservations.com;  
9 www.lodgingreservations.com.

10 Q. Now, there was some argument by Google's  
11 counsel -- I want to be clear on this.

12 Mr. Dean, did you complete this first phase of  
13 your patent application and invention?

14 A. Yes.

15 Q. Do you have a video showing the operation of  
16 stage one of your system?

17 A. Yes, we do.

18 Q. Before we actually play the video, could you  
19 please describe for the jury what we are about to look  
20 at and how it came about?

21 A. These -- the video is from the actual -- an  
22 actual seller interface, and it's -- it's off of a  
23 computer from 2002. That program was essentially -- I  
24 mean, everything that's there was the same as when it  
25 was -- or in January of 2000.

1           And so -- so we're going to have a video of  
2 how a bed and breakfast innkeeper might interact with  
3 our system through that seller interface.

4           We're then going to take you to a video of an  
5 actual presentation that was on the web at  
6 lodgingreservations.com in that 2002 -- it's from a  
7 Granbury Inn, and it's in that 2002 period. It was an  
8 actual presentation from there.

9           And we'll take you through that and show you  
10 how the data that was entered by the innkeeper, that  
11 custom message that was entered by the innkeeper was  
12 converted from their raw text input and was converted  
13 and reformatted into the standards of the  
14 lodgingreservations.com website.

15           Q.    Okay. Let's go ahead and see the video.

16                    (Video playing.)

17           Q.    (By Mr. Nelson) What are we looking at here,  
18 Mr. Dean?

19           A.    Yes. That's -- that's the -- that would just  
20 be the desktop that the innkeeper would have on that  
21 interface. Here's a log-in screen.

22                    I'll try to be brief here and keep up with it.  
23 This is the splash screen that just comes up first,  
24 shows the version numbers, et cetera.

25                    Okay. That -- that -- can we pause there?



1           Just quickly, that's an error message because  
2 this particular database carries a credit card number in  
3 it from 2002. So the program believes that it's  
4 expired, which I'm sure it is. So that's the reason  
5 we're getting the error message.

6           Let's continue.

7           And so you see across the top, we have all  
8 these various -- various boxes or buttons. And by  
9 pressing those buttons, we get input screens. And we're  
10 just going to go to a couple of them because of time  
11 constraints.

12           This is the general information. So here's  
13 where the innkeeper would put things such as directions  
14 to their inn.

15           Let's pause -- continue.

16           Pause.

17           Okay. We're looking at the attractions tab,  
18 and this is where the innkeeper, through that new button  
19 on the other side, would have input various attractions  
20 that they wanted to promote in order to get people to  
21 come to -- to come to their area.

22           So -- and this is -- this was especially  
23 important with innkeepers, because they have a very  
24 tough time not only getting the message out that you  
25 should come to my inn and I have a beautiful bed and

1 breakfast, but here are the things that you can do and  
2 why you should stay an extra day.

3           So that was the promotion; that was the sales  
4 that we were trying to facilitate.

5           Go on.

6           So this is where they put -- they put the  
7 message about each attraction. And once again, this is  
8 a test machine, so some of these are -- are -- so they  
9 were -- this particular test -- our tester was putting  
10 in these -- these various attractions.

11           Let's pause there.

12           Was putting in these various attractions,  
13 putting in the -- the custom message and then putting in  
14 the -- you know, the titles, et cetera.

15           Now, what we're looking at here -- what you're  
16 looking at with this presentation, this is a -- this is  
17 a preview screen or a preview system within the seller  
18 interface.

19           So when -- the concept was that to help these  
20 sellers envision what was going to show up on the  
21 internet, we would allow them to input all their  
22 information, hit that view screen, and the program would  
23 generate a -- you know, one example of how this -- how  
24 this is going to show up.

25           And you'll notice that -- that it's -- you

1 know, the raw data that you saw being input in those  
2 text boxes and on the text boxes concerning the  
3 attractions, plus the photographs that were being  
4 attached to it, are now being presented in a format with  
5 this beige background and in this -- in this  
6 listing-type format.

7           Let's go on.

8           So -- so that's the attractions. We're going  
9 to close that. And then we're going to take a look at  
10 rooms.

11           So this -- this is where a bed and breakfast  
12 operator would promote each room, because bed and  
13 breakfasts are -- let's pause.

14           Bed and breakfasts are well known for having  
15 rooms with character. This was not designed to be used  
16 for a standard, cookie-cutter motel situation. This  
17 is -- these are people that are very proud of their  
18 inns. They are very -- they spend extensive time making  
19 themes for the various rooms, and they want to show it  
20 off.

21           So this is where they would input the names of  
22 the rooms.

23           Let's go on.

24           And here's -- let's pause.

25           Here's where they would put in the description

1 for that room. So you had a long description. You also  
2 had a requirement for a short description.

3 And, again, this is being put in as raw data.  
4 Just fill in the text box. The innkeeper didn't have to  
5 do any formatting, no consideration. The innkeeper  
6 concentrated on getting their message that we would then  
7 promote.

8 And you'll see there's check boxes at the  
9 bottom.

10 Go ahead.

11 There we go. Let's pause there for a second,  
12 too.

13 This -- this is a series of check boxes that  
14 allow the innkeeper to just quickly check a box based on  
15 the various -- various amenities that that room might  
16 have.

17 Q. Mr. Dean, may I stop you there?

18 A. Yes.

19 Q. Could each different innkeeper check different  
20 boxes when it went to this interface?

21 A. Oh, absolutely. These were -- all of these  
22 were optional. In the text boxes, this was a suggested  
23 list. And down -- down on the bottom, you'll notice it  
24 says other room amenities where they could actually put  
25 custom amenities that we had never heard before.

1           So it was designed for those to be -- you  
2 know, these boxes to be checked where the standard is  
3 just to speed up the process and help these people  
4 identify ways of promoting and ways of identifying and  
5 differentiating the rooms that they had to offer.

6           But you'll notice that they're not typing in  
7 any of that. They're just putting the check box in.

8           Go ahead.

9           And here's where we do a view -- okay. Let's  
10 hold it. Hold it right there, please.

11           Once again, this is the preview function  
12 within the -- now, this is before the data has ever been  
13 transmitted to the central location. This is setting  
14 on -- this is within that seller interface that the  
15 seller has the ability to preview and make sure that he  
16 likes what he's come up with.

17           So -- and you can see they put in a short  
18 description, and then off to the right-hand side there,  
19 there's a list of those check boxes that were the  
20 amenities. So the innkeeper checked a box, and then the  
21 text of the amenities shows up on the preview.

22           Go ahead.

23           Now we're closing this, and we're going to go  
24 on, and we're going to show you a -- a sample -- not a  
25 sample. This is an actual innkeeper presentation that

1 appeared on the internet at that point in time.

2 Can we pause there?

3 As you had seen in the previous screen with  
4 the -- with the -- with the -- with that innkeeper  
5 interface or that seller interface, we want to call it,  
6 they were able to put in images and put in the name of  
7 the inn, a description for the inn, and the various  
8 amenities. And these amenities are for the -- for the  
9 overall inn.

10 And you'll notice that this looks entirely  
11 different than the preview that you had seen before.

12 And the reason for that was that the innkeeper  
13 used the preview to examine or test or make sure that he  
14 was -- he was telling everything he needed to tell.

15 But then when he transmitted the information,  
16 the information was transmitted purely as raw data.  
17 There was no formatting; there were no backgrounds;  
18 there were no colors. Nothing was transmitted other  
19 than the pure raw text, which boxes were checked,  
20 information that would just drop straight into a  
21 database. There was no formatting.

22 Go ahead.

23 And what we're going to show here is that --  
24 well, let's -- I think we're scrolling down here, so --  
25 and you can see this is fairly lengthy information, and

1 there are the amenities. So out of a broad list of  
2 amenities, this -- this innkeeper -- and let's hold  
3 right there.

4 This is Baker Street Harbour B&B on the Lake,  
5 nice little bed and breakfast right on the lake in  
6 Granbury, and -- and this is how they wanted people to  
7 perceive their inn. This is how they wanted to promote  
8 their business.

9 Owner/operators. They live right on the  
10 premise, and they bring you breakfast in the morning.

11 So let's go ahead.

12 And you see, we're going to go to the  
13 attractions.

14 Let's stop right here.

15 On the attraction -- this is the same -- this  
16 is the result from the Baker Street Harbour Bed and  
17 Breakfast of the same type of data that we saw being  
18 input on the other side, that of the -- of the  
19 attractions.

20 Go ahead.

21 Q. Can I stop you right there before we go on?

22 A. Sure.

23 Q. This -- these were the attractions picked by  
24 this particular Baker Street Harbour B&B.

25 Could, say, another innkeeper down the road in

1 Granbury pick other attractions would then show up on  
2 the site as well that would be different from the  
3 attractions that the Baker Street Harbour B&B picked?

4 A. Absolutely. Because what we were trying to do  
5 was give these people the power of the internet, the  
6 power for them to get a personalized message customized  
7 to their -- to their situation and what they wanted to  
8 sell, and allow them to get that out.

9 So what we're talking about is that the Baker  
10 Street Harbour desired to put up this Dinosaur Valley  
11 State Park. There was a Captain's House Breakfast  
12 nearby. They would have a totally different list. They  
13 would have a different description.

14 Sometimes they would have the exact same  
15 attraction, but it would have different photographs, and  
16 it would then have different descriptions.

17 We got many e-mails from people complimenting  
18 us on this -- this format from the standpoint that it  
19 provided a -- almost a travel guidebook that was  
20 individually produced by these various bed and  
21 breakfast --

22 Q. Okay. Let's go on.

23 A. -- innkeepers.

24 Let's go on.

25 So this is Granbury, Texas, and we'll just



1 take a quick look here at -- at -- and see what Baker  
2 Street Harbour put up.

3           There's the Granbury Opera House, so they did  
4 that. And once again, that formatting is entirely  
5 different than that preview you saw. The courthouse,  
6 the county jail. There's Lake Granbury. And over here,  
7 we have one of the -- one of the few remaining, at that  
8 time, outdoor drive-inns.

9           Q.    The county jail was a historical place?

10          A.    Yes.

11          Q.    Go on.

12          A.    Sorry.

13                Okay. We'll quickly go to the rooms on that  
14 bed and breakfast. And once again, let's stop right  
15 there.

16                They were -- they were able to put in the  
17 customized room information for each and every room. So  
18 if they had a nine-room inn and all nine rooms were  
19 different, they would put in nine different  
20 descriptions. And they would have nine different  
21 amenities, possibly, depending on that room.

22                I mean, when you're on the lake, some -- some  
23 units or some rooms have lake views and some rooms do  
24 not. So this gave them the flexibility to do this  
25 customized presentation.

1           And all of it was done -- all this text -- all  
2 this text was input just as pure text, and it was  
3 transmitted to the central processor in that  
4 presentation generation program. It was -- it was sent  
5 purely as raw text.

6           There's no formatting, no backgrounds, no  
7 colors. Then -- then our presentation generation  
8 program can reconfigure it in any way that our program  
9 sees fit.

10          Go ahead.

11          And this is just other rooms. Dr. Doyle's  
12 Suite. And you can see the list of amenities is longer  
13 for that room, shorter for the next room.

14          So I believe -- I believe that's the end of  
15 that -- of that Baker Street Harbour presentation.

16          Q.    Okay. Great. Mr. Dean, what would have been  
17 necessary to complete the system disclosed in your  
18 patents at this point?

19          A.    At the point that we -- at the point the -- of  
20 the items that we had completed, we had mastered the  
21 difficult parts of it.

22          That -- that interface, as you saw, created  
23 multipage presentations. They were very complex. There  
24 was lots of information, because we believed in putting  
25 out lots of information for those innkeepers and for

1 those travelers.

2           The -- what we would have done to go forward  
3 is to -- is to take that shell, if you will, take the  
4 internal programming, and do the exact same thing for  
5 the media venue to allow them to input their -- their  
6 presentation rules and their design and style standards.  
7 That was the part that we never finished. But the level  
8 of difficulty was not there. We had -- we had  
9 accomplished the level of difficulty. We had gotten  
10 over the hurdles.

11           So -- so, yes, it would have -- we could  
12 have -- we could have accomplished it.

13           Q. Did the patent describe how to complete the  
14 system that you just described here?

15           A. Yes, it did.

16           Q. Why didn't you complete the system?

17           A. We -- we -- I mean, quite frankly, we're a  
18 small mom-and-pop business, and we ran -- ran out of  
19 money.

20           Q. Did you try to get venture capital or other  
21 sources of funding to continue trying to develop your --  
22 your business in this system?

23           A. Yes, we did. I -- I -- I met with venture  
24 capitalists, and I was told that we were too old. I was  
25 told that they were looking for fresh faces with

1 briefcases.

2 Q. Is that a quote?

3 A. That's a direct quote.

4 Q. Now, let's talk about what was going on within  
5 Virtual Cities during those days. What was the division  
6 of labor, if any, between you and Ms. Stone?

7 A. Well, Lucinda was definitely -- she was the  
8 boss. She was running the business. If there were any  
9 technical issues, then I handled the technical issues.  
10 But she ran the shop.

11 Q. Now, were you also handling the patent  
12 matters?

13 A. Yes. I dealt with the attorneys and dealt  
14 with the PTO, the Patent Office, to push forward our --  
15 our -- our patents on -- on our invention.

16 Q. You stated before that you filed your first  
17 application on January 10th, 2000; is that right?

18 A. Yes.

19 Q. Did that application later become a patent?

20 A. Yes, it did. It became the '045 patent.

21 Q. Okay. While that '045 application was  
22 pending, did you file for another patent related to that  
23 '045 patent?

24 A. Yes -- yes. You're allowed to -- upon  
25 allowance from the PTO, you're allowed to then file a

1 continuation of that.

2 Q. Let me stop you right there. Could you just  
3 explain for us, what is a continuation?

4 A. A continuation application for a patent is a  
5 patent application that has a filing date, but -- but  
6 the specification and the drawings and the figures all  
7 come from a previous -- a previous patent.

8 Like in our case, everything relates back to  
9 that January 2000 date. That specification carried  
10 forward through -- through our advertising patents.  
11 It -- it didn't change in those continuations -- those  
12 continuation applications.

13 Q. What was the patent application that you filed  
14 in 2002 that was a continuation of that original January  
15 10th patent application?

16 A. The -- that one was the -- what became the  
17 '059 patent, the second patent that we're -- that we're  
18 dealing with here today.

19 Q. And was there also the '587 patent?

20 A. Yes. There was a -- we had the '045. There  
21 was a continuation off of that to the '587. That -- we  
22 filed a continuation that then became the '045 -- I  
23 mean -- excuse me -- I get confused with these -- became  
24 the '025.

25 Q. Now, just to be clear for all of us and for

1 the jury, could you please remind the jury whether the  
2 specification, the figures, the descriptions -- were  
3 those the exact same in the '025 patent and the '059  
4 patent that was originally filed in the Patent &  
5 Trademark Office on January 10th, 2000?

6 A. Yes, they were exactly the same. If you take  
7 the -- if you take the figures -- the figures and the  
8 specification from the '045 filed January of 2000 is  
9 exactly the same in the '0 -- in the '587, which was a  
10 continuation, and it's exactly the same in the '025 that  
11 was a continuation of the '587.

12 So that specification, that disclosure, that  
13 teaching, if you will, where we were -- we were laying  
14 out how someone could use our invention, could build our  
15 invention, and we were pointing out the importance of  
16 our invention, that specification carries forward  
17 through all of those, all the way back to January of  
18 2000.

19 MR. NELSON: Permission to approach the  
20 bench, Your Honor?

21 THE COURT: Yes.

22 Q. (By Mr. Nelson) Mr. Dean, I'm going to hand  
23 you what is Plaintiff's Exhibit 1, the '025 patent, and  
24 Plaintiff's Exhibit 3, which is the '059 patent.

25 A. Yes.

1 MR. NELSON: And could we please put up  
2 Plaintiff's Exhibit 1 for the jury?

3 Q. (By Mr. Nelson) Mr. Dean, what are we looking  
4 at here on that first page and the cover of what's on  
5 the patent? If you can maybe show that to the jury,  
6 too.

7 A. Yes. This is the cover sheet of an original  
8 patent issuance from the -- from the PTO, from the  
9 Patent Office. And it has -- it has their seal, which  
10 is how you can tell that this is the original awarded  
11 patent.

12 Q. Okay. Let's go to the first page of the  
13 patent itself. And, Mr. Dean, you are listed as one of  
14 the inventors on this patent; is that right?

15 A. Yes. Lucinda and I are -- are the inventors.

16 MR. NELSON: And if you could go, please,  
17 to the top right-hand side.

18 Q. (By Mr. Nelson) Could you just describe for  
19 the jury what we're looking at here and what this means.

20 A. Yes. That's -- that's -- we refer to this as  
21 the '025 patent, but that's the full patent number. And  
22 underneath --

23 MR. NELSON: And the jury should have a  
24 tab on this in its jury notebook under the '025 patent.

25 A. And -- and the -- and then underneath that is

1 the date that it was issued, which was July of 2007.

2 Q. (By Mr. Nelson) Now, if you go down on that  
3 left-hand side column, does it say when the application  
4 was filed?

5 A. Yes. It shows -- right in the middle there,  
6 it shows September 30th of 2004.

7 Q. That's Line 22?

8 A. Yes.

9 Q. Okay. Now, could you please look at Line 63  
10 and explain what the sentences mean in Line 63 for the  
11 jury.

12 A. That's -- that's the list of continuations, or  
13 the heritage, you might say, or the parents of this  
14 patent. And you can see it goes from the -- from the  
15 continuation application, and then it goes to that '587,  
16 and then it goes back all the way to January 10th of  
17 2000, which is the '045.

18 That lineage is what carries that  
19 specification forward for the -- for this continuation  
20 application.

21 Q. Mr. Dean, what is the relationship between the  
22 claims in the '025 patent that is one of the  
23 patents-in-suit here today and the application that was  
24 filed January 2000?

25 A. Yes. The -- the claims in the '025 patent



1 come directly from the specification that was filed in  
2 January 10th of 2000. So that '025, every claim in  
3 there is supported in that original application of  
4 January 10th, 2000, that the Examiner reviewed.

5 Q. Now, let's briefly put up Exhibit 3, the '059  
6 patent, which is also a jury tab.

7 Again, what is this first page, this cover  
8 page, Mr. Dean?

9 A. Yes. Again, we have -- we have the cover page  
10 from the U.S. PTO showing the seal, the U.S. Government  
11 Department of Commerce seal, and the awarding of the  
12 '059 patent.

13 MR. NELSON: And let's again go to the  
14 first page of the patent. And let's blow up that upper  
15 right-hand corner.

16 Q. (By Mr. Nelson) Mr. Dean, does this describe  
17 when the patent was issued and what its number is?

18 A. Yes. That's the full number of the '059, and  
19 it shows it being issued July 24th of 2007.

20 Q. Okay.

21 MR. NELSON: And let's then also go  
22 quickly to Line 63 of this patent.

23 Q. (By Mr. Nelson) And this one, Mr. Dean, what  
24 does it say on Line 63?

25 A. This says that it's a continuation-in-part.

1 Q. What is a continuation-in-part?

2 A. You have two types of -- to my knowledge, you  
3 have two types of continuation applications.

4 You have a continuation application that takes  
5 the specification and directly moves it forward, and  
6 your claims come off of that.

7 When you have a continuation-in-part, what has  
8 happened is, you're using the original specification,  
9 that January 10th of 2000, and then you're adding some  
10 new substance to it. You're adding some new inventive  
11 ideas that you've come up with over that period of time.

12 Q. Now, it says that you filed this application  
13 July 11th, 2002. Is that when you filed this  
14 application?

15 A. That's correct.

16 Q. Again, you and Ms. Stone are the named  
17 inventors on this patent?

18 A. Yes.

19 Q. Now, we've talked about this '045 patent and  
20 the '587, which was the first continuation, and then, of  
21 course, the two patents-in-suit.

22 Which of these four patents, just to be clear,  
23 are we talking about today and which are you asserting  
24 here against Google?

25 A. We are asserting the -- the '025 and the '059.

1 Q. Now, I'm -- I'm hoping, Mr. Dean --

2 MR. NELSON: Can we go back to  
3 Plaintiff's Exhibit 1, please?

4 Q. (By Mr. Nelson) Could you -- orient ourselves  
5 a little bit on this patent and -- and describe  
6 briefly -- we've talked about what's on the first pages.

7 MR. NELSON: Let's go to Page 3 of the  
8 patent.

9 Q. (By Mr. Nelson) What are we looking at here in  
10 Page 3 going forward?

11 A. This is -- this is the start of the section of  
12 the specification called the figures. I believe there's  
13 35 pages of drawings and flowcharts.

14 And this is -- this is meant to give graphical  
15 information, visual information, in conjunction with the  
16 written specification so that someone reading this  
17 patent can actually build this system, understand its  
18 importance, and understand the -- the -- how all the  
19 pieces fit together, if you will.

20 These are very -- very important guidelines  
21 for a programmer on -- or for anyone trying to -- trying  
22 to duplicate what we've done. And patents are teaching  
23 vehicles. They're meant to tell someone skilled in the  
24 art exactly what you've done that's important and that  
25 is your invention.

1 Q. Now, what is after these figures?

2 A. After the figures comes the written  
3 specification, the written part of the specification,  
4 and this is a detailed text and narrative that then  
5 relates back to those figures.

6 And -- and you'll see, there's block numbers  
7 spread throughout. Each one of those block numbers  
8 typically will refer you to someplace on the -- the  
9 figures. And the whole idea is to provide the best  
10 teaching possible to convey this invention.

11 Q. Okay. Let's stop at Column 64, which is where  
12 we are right now up on the screen.

13 A. Yes.

14 MR. NELSON: Could you zoom in, please,  
15 on that bottom right-hand?

16 Q. (By Mr. Nelson) What is happening here,  
17 Mr. Dean, in this patent?

18 A. This -- this is -- this is the first claim.

19 Q. And maybe just wait a couple of seconds, if  
20 the jury wants to catch up in its own notebook.

21 A. Sorry.

22 Q. Okay. Why don't you go on?

23 A. Yeah. This is -- this is the -- the first  
24 part of Claim 1 of the '025, the independent claim -- or  
25 one of the independent claims of the '025.

1 Q. Now, before this -- what is claimed at the  
2 bottom of Column 64, is everything in this '025 patent  
3 the same, the figures and the written specification, as  
4 what you filed to the Patent Office on January 10th,  
5 2000?

6 A. Yes, it is. There's -- this patent has 397  
7 claims. Each one of those draws upon the material that  
8 we submitted in January of 2000. It's that January of  
9 2000 specification that is the core teaching of our  
10 invention.

11 Q. Now, perhaps we could use some of the figures  
12 to illustrate how your invention works, if that's okay.

13 A. Sure.

14 Q. Is there a particular place in the patent  
15 that -- that we should turn?

16 A. Yes. Let's look at -- I believe -- let's  
17 start with 1b.

18 Q. Okay. Okay. Let's go to Figure 1b. This is  
19 near the front of the patent.

20 A. Yes.

21 Q. Okay. And we're going to highlight some  
22 things up on the screen. And, Mr. Dean, maybe using  
23 Figure 1b as a guide, could you please explain how the  
24 invention works to the jury?

25 A. Maybe we'll just take a second and --

1 Q. Sure.

2 A. I see lots of shuffling going on. There's a  
3 lot of paper there.

4 Okay. Figure 1b is an overview of our  
5 invention, and it shows the relationship of all the  
6 various components or entities or -- or, you know,  
7 the -- it shows the relationship and how these things  
8 interact.

9 And once again, this figure is -- is further  
10 described in the written -- written description, so it's  
11 meant that someone would sit down, have this figure in  
12 front of them, and be reading the reference material to  
13 this figure.

14 Q. Let's start maybe at the top left, which is  
15 the seller interface. Could you please describe, what  
16 is the seller interface? Can you give me an example of  
17 that?

18 A. Well, the -- the example of that seller  
19 interface is the seller interface that we demoed in  
20 our -- in our video.

21 That's the interface that allows the seller to  
22 sit down and input raw data to input his custom message,  
23 his advertising message, if you will, that he wants to  
24 promote a product or a service or -- or who knows what,  
25 and it allows him to then input information on where he

1 wants to advertise. And it's done at that location.  
2 When -- when he presses the submit button, the raw data  
3 containing that information to -- that information  
4 concerning his advertising message and the  
5 information -- and that's the information to create his  
6 ad.

7 Q. Now, is the seller interface software?

8 A. Yes. I'm sorry. Yes. The seller  
9 information is -- I mean, the seller interface is purely  
10 software.

11 Q. Okay.

12 A. And when they hit that submit button, that raw  
13 data is then transmitted to 1,000, which is the central  
14 controller and presentation processor.

15 Q. Okay. Now, could you -- besides what you just  
16 demoed to the jury, can you give another example perhaps  
17 of a seller interface and how the seller interface is  
18 used.

19 A. Well, let's -- and we've talked about a fairly  
20 complicated seller interface or a very complicated one,  
21 which was our bed and breakfast.

22 If we -- if we -- we might take a more simple  
23 one that would be allowing general merchandise, and  
24 we'll use an example of a seller that's -- that is  
25 selling T-shirts.

1           So that seller would -- would sit down, and he  
2 would input: Buy my T-shirts. And so that would be the  
3 information to create. He's created his ads -- or his  
4 ad: Buy my T-shirts. That's the message he wants to  
5 hammer on. That's the message that's going to bring him  
6 his income.

7           So having done that, he then -- he then inputs  
8 where he wants that message to go. And he's looked at  
9 his demographics, and he says, I want this message to go  
10 to all college campus -- college campus websites.

11           So he puts in the information about going to  
12 college campus websites, and that information is  
13 submitted.

14           So there you've got your two components of raw  
15 data. You've got your advertising message: Buy my  
16 T-shirts. You've got your -- and it could be buy shoes,  
17 you know, buy umbrellas, whatever.

18           And then he -- and then he says all campus --  
19 all college campus websites. So that's then submitted  
20 to the central controller and presentation processor.

21           Q. Now, we've talked about the seller interface.  
22 Is the web publisher internet media interface described  
23 on this Figure 1b as well?

24           A. Yes, it is.

25           Q. Where is that?



1           A.     That would be block 6,000 over there.

2           Q.     Okay.   And what is that?

3           A.     Well, and that would be where whoever was  
4 managing the website for the university or college  
5 campus, they would be inputting their standards.

6                     And Mr. Tribble gave you an example, so you  
7 might have -- have a college that -- UT, that was  
8 putting in -- we want our backgrounds to have burnt  
9 orange, and we're not going to accept anything else.  
10 And you've got another one that says red.   You've got  
11 another that says -- so they're putting in their school  
12 colors.   They're putting in something that's going to  
13 compliment and is going to fit into the design and style  
14 to control that look and feel that I talked about of  
15 their website.   They're protecting that look and feel.

16          Q.     Now -- and where does that information go?

17          A.     That -- that information -- on 6,000, that  
18 information then goes back to when they submit it, and  
19 it's the same -- it's the same process.   It's submitted  
20 as raw data.

21                    They don't actually put in the formatting  
22 commands.   They put in the raw data that it takes to --  
23 to say what background -- what background they want or  
24 what -- what controllers they want.   So that raw data is  
25 then transmitted to 1,000 again.

1 Q. Okay. And let's go to 1,000. Is there any  
2 other figure that that also describes or goes into  
3 detail about, Figure 1,000?

4 A. Yes. On 1,000, if we could -- on that one, we  
5 need to flip over to -- to -- I believe it's 2a.

6 Q. Okay. And what are we looking at here,  
7 Mr. Dean?

8 A. 2a is a -- and once again, I need to stress  
9 that when you file a patent application, what you do is  
10 you put in what you consider to be the best embodiment  
11 of the system, the best design for a variety of reasons.  
12 So although this -- you know, this -- this -- this shows  
13 up as a given embodiment that could be built, the patent  
14 is not designed to be limited to that.

15 But on -- on this, it shows -- and the key we  
16 want to point out here is -- is we've got those various  
17 databases under the 1600, so there's a whole bunch of  
18 databases, but the important item is to go down to 1710.

19 Q. And what is 1710?

20 A. And 1710 is the presentation generation  
21 program. It's the presentation generation program  
22 that -- that does all the work.

23 The presentation generation program takes that  
24 custom message, brings in those requirements from the --  
25 from the various websites, selects the website, and

1 combines that custom message to end up with a buy my  
2 T-shirt ad in burnt orange, with the burnt orange  
3 background, burnt orange lettering, some sort of  
4 combination that was set up to complement their site.

5           At the same time that's going on, the  
6 information from the -- from the college campus that was  
7 running maroon or wanting maroon is being combined with  
8 that same custom advertising message, the buy my  
9 T-shirts, and it's coming out with a maroon ad that  
10 says: Buy my T-shirts. And those are sent to the  
11 appropriate place.

12           Once again, this is -- you know, it's a matter  
13 of controlling that look and feel, and -- and it's also  
14 a matter of providing the efficiency. We had one stop;  
15 we had one seller interface; he inputs the data. And  
16 I've given you two examples. It could be 2,000 examples  
17 of where it's going to go.

18           Q.     Now, referring back --

19                   MR. NELSON: Could we go back to  
20 Figure 1b for a second?

21           Q.     (By Mr. Nelson) We've talked about these three  
22 boxes. Are there figures that go into detail for each  
23 of these three highlighted boxes as well?

24           A.     Yes. There's -- there's -- I believe there's  
25 64 columns, plus other figures. There's other figures

1 and then 64 columns of written description that lays out  
2 what each one of these is and what -- and what it --  
3 what its function is within the invention.

4 Q. Okay. And let's -- I want to focus briefly on  
5 the seller interface again.

6 In this system, does the seller insert a  
7 finalized advertisement?

8 A. Absolutely not.

9 Q. Okay. Thank you.

10 A. Raw data only.

11 Q. Okay. Finally, I want to switch gears and  
12 spend the last few minutes of this morning talking about  
13 the parties in this lawsuit.

14 First of all, who is -- what is Function  
15 Media?

16 A. Well, Function -- Function Media is a holding  
17 company that Lucinda and I created to -- to hold our  
18 patents and provide a license for -- I mean, provide an  
19 entity for conducting licensing of those patents.

20 Q. Did you and Ms. Stone assign the two  
21 patents-in-suit to Function Media?

22 A. Yes, we did.

23 Q. Now, why did you form Function Media as  
24 opposed to just holding the patents in your own name?

25 A. Our other business interests are corporations,

1 and the advice we get is that we should have  
2 corporations to hold this type of intellectual property  
3 and act as an entity in the licensing.

4 Q. And you and Ms. Stone are the 100 percent  
5 owners combined?

6 A. Yes. We own 100 percent of it.

7 Q. Where would be Function Media's headquarters,  
8 if there are any?

9 A. Well, Function Media is a Texas corporation.  
10 It's owned by Lucinda and I, and we're here in Texas.  
11 But I'm not sure I'd refer to it as headquarters. These  
12 Function Media licensing is the only operations going  
13 on.

14 Q. Now, you briefly touched upon this at the  
15 beginning of your testimony today, but why are you suing  
16 Google for patent infringement?

17 A. This is -- these patents are our property.  
18 These patents belong -- these are the property of  
19 Lucinda and I.

20 And it was granted -- this property was -- was  
21 granted -- this property right was granted to us by --  
22 by the PTO through Congress and all the way back to the  
23 Constitution. This is -- this is our ownership right as  
24 Americans to have these patents.

25 We -- Google is making a huge amount of money

1 off this system, and -- and we just want a fair royalty.  
2 We want -- we want -- we want a fair licensing agreement  
3 and royalty off of our property.

4 Q. What do you think of Google as a company?

5 A. I think they're great. There's a -- I mean,  
6 they're bright. They're -- they have lots -- lots of  
7 good products. I just wish they would acknowledge and  
8 license our technology.

9 Q. Now, again, we touched upon this briefly at  
10 the beginning of the testimony, but why didn't you  
11 contact them before filing suit here?

12 A. The -- the -- once again, the fundamental  
13 patents that are at the core of really important  
14 inventions, okay, these fundamental patents -- and  
15 Google, I believe, has \$5 billion worth of revenue, we  
16 heard earlier.

17 Q. For these -- just to be clear, for these  
18 accused products only?

19 A. Just for these accused products. And so these  
20 are core, fundamental, high-priority systems, and those  
21 are rarely, if ever, licensed outside of the context  
22 of -- of litigation.

23 Q. Now, if Google had approached you at the time  
24 that the '025 and '059 patents had issued, would you  
25 have been willing to negotiate a license?

1 MR. VERHOEVEN: Objection, calls for  
2 speculation.

3 THE COURT: Overruled.

4 Q. (By Mr. Nelson) You may answer.

5 A. Yeah.

6 Q. You want me to repeat the question? How about  
7 this?

8 A. Please.

9 Q. Yes. If Google had approached you at the time  
10 of the '025 and '059 patents, when they issued, would  
11 you have been willing to negotiate a license?

12 A. Yes, I would.

13 Q. Okay. And what -- generally, what type of  
14 license would you have been interested in negotiating?

15 A. I would have been interested in negotiating a  
16 running royalty.

17 Q. Could you just maybe briefly describe for the  
18 jury, what is a running royalty?

19 A. Well, I believe -- at least what I mean from a  
20 running royalty is that -- is that we would negotiate a  
21 percentage, and going forward, Google -- we would get a  
22 percentage of the -- of all the revenue.

23 It seems to me that that's only fair. It's a  
24 case of sharing in the upside, and if there isn't an  
25 upside, then you don't get it. If there is an upside,

1 then you -- you know, then you get your percentage.  
2 But it's just -- it's a fair way of handling -- of  
3 handling -- you know, it's a -- it's a fair way of  
4 handling the system in any environment, but when you're  
5 talking about the explosion that is the internet -- and  
6 the internet -- I'm a true believer in the internet.  
7 The internet has just begun.

8           This technology is going to go forward, and it  
9 has -- it only has upside, and we are real believers in  
10 it.

11       Q.    Now, have you had the opportunity to  
12 specifically think about what any starting point would  
13 have been for you in these negotiations that you would  
14 have had with Google?

15       A.    Yes. Lucinda and I have talked about it -- or  
16 talked about it back then.

17       Q.    And more recently, too?

18       A.    Yes.

19       Q.    And what would that have been?

20       A.    It would have been 20 percent.

21       Q.    Why 20 percent as a starting point?

22       A.    These -- these are fundamental, core  
23 technologies. As much as -- as there's all kinds of  
24 things happening, Google's system -- the accused  
25 products do not work without our invention.



1           So, yes, there's \$5 million (sic), but without  
2 our system, there's nothing.

3           Q.     Now, Mr. Dean, in your personal experience as  
4 a web publisher --

5           A.     Yes.

6           Q.     -- do publishers benefit from these  
7 inventions?

8           A.     Absolutely. We -- Lucinda -- Lucinda and I  
9 were publishers on the Google system, and it's a very  
10 beneficial system.

11          Q.     How is it beneficial to publishers?

12          A.     It allows -- it -- it allows the publishers to  
13 monetize -- essentially, to monetize what would have  
14 been sort of a lost opportunity by being able to -- to  
15 stick ads on web pages or websites that -- that you've  
16 got room for and convert that -- convert those views, if  
17 you would, into cash flow.

18          Q.     And from your personal experience, what is the  
19 cost to a publisher of adding these ads to their sites?

20          A.     It's next to nothing.

21          Q.     Okay.

22                   MR. NELSON: Thank you, Your Honor.  
23 We'll pass the witness.

24                   THE COURT: Cross-examination.

25                   MR. VERHOEVEN: May I inquire how long

1 we're going, Your Honor? Till noon?

2 THE COURT: Nine minutes.

3 MR. VERHOEVEN: Nine minutes.

4 CROSS-EXAMINATION

5 BY MR. VERHOEVEN:

6 Q. Morning, Mr. Dean.

7 A. Good morning.

8 Q. Let me start with some background questions,  
9 if I might.

10 A. Sure.

11 Q. You've completed a few years of college,  
12 correct?

13 A. Yes.

14 Q. You have no college degrees, though; is that  
15 right?

16 A. No, I do not.

17 Q. And is it -- is it fair that you did not take  
18 any programming classes in college? Right?

19 A. No, that's not -- that's not true. When I --  
20 in 1998, when I went back to that --

21 THE COURT: Well, just a second -- if  
22 it's true, just say it's true. If it's not true, just  
23 say it's not.

24 THE WITNESS: I'm sorry, Your Honor.

25 THE COURT: You'll get a chance to

1 explain when your lawyers ask you additional questions.

2 THE WITNESS: Okay. Sorry.

3 THE COURT: Proceed.

4 Q. (By Mr. Verhoeven) Let me ask you this: Did  
5 you take any programming classes in college or after  
6 college unrelated to Virtual Cities?

7 A. No.

8 Q. Before you worked on the Virtual Cities' --  
9 well, let me back up.

10 The software that you showed the demonstration  
11 for, that had a name, right?

12 A. Yes.

13 Q. It was called Virtual Cities Reservation  
14 Network?

15 A. Yes.

16 Q. Now, before you worked on the Virtual Cities  
17 Reservation Network, you had never programmed anything  
18 else, had you, sir?

19 A. No, I had not.

20 Q. Now --

21 MR. VERHOEVEN: Ed, if I could get the  
22 claim chart over there.

23 Your Honor, may I come around here and  
24 put it up here?

25 THE COURT: Yes.

1 MR. VERHOEVEN: And may I ask the witness  
2 a few questions from over here?

3 THE COURT: Yes.

4 MR. VERHOEVEN: Thank you.

5 Q. (By Mr. Verhoeven) Can you see this, Mr. Dean?  
6 Should I move it over here?

7 A. That might be better, yes.

8 Q. Okay.

9 MR. VERHOEVEN: Is that okay, Your Honor?

10 THE COURT: Take a moment, please. Make  
11 sure that the Members of the Jury can see it as well.

12 MR. VERHOEVEN: Yes, Your Honor.

13 Q. (By Mr. Verhoeven) Now, you gave a lot of  
14 testimony about how your patent works, but I notice we  
15 didn't -- you weren't asked about the actual claims  
16 here, so I'd like to ask a couple questions about the  
17 claims.

18 This is Claim 1 of the '025 patent; is that  
19 right?

20 A. That's correct.

21 Q. And you understand that a patent is a property  
22 right, right?

23 A. Yes.

24 Q. And that there's boundaries to that property  
25 right, correct?

1 A. Yes.

2 Q. And you understand that the claim language  
3 defined the boundaries of the patent, right?

4 A. Yes.

5 Q. And you understand that for someone to  
6 infringe the patent, that they have to meet every one of  
7 these elements, right?

8 A. Yes.

9 Q. Okay. Now, this claim I'm going to use,  
10 because it's a representative claim, has this first  
11 interface you're talking about, right?

12 A. Yes.

13 Q. And can you describe for the jury what that  
14 first interface is in that claim language?

15 A. Do you want me to read it?

16 Q. If that's how you'd like to describe it, sir.

17 A. Well, I -- a first interface to the computer  
18 system through which each of the internet media venues  
19 is prompted to input presentation rules for the internet  
20 media venue for displaying electronic advertisements on  
21 the internet media venue.

22 Q. Okay. What does that mean? Can you turn that  
23 into non-patentees for the jury?

24 A. Sure. I believe so.

25 The -- if you recall, we -- we looked at

1 the -- I did a video that had the first interface of the  
2 seller. So within this, one embodiment of it -- and  
3 once again, we were showing a preferred embodiment in  
4 our patent application.

5 So one possible embodiment of it would be to  
6 have the first interface, which in -- which the first  
7 interface is for the internet media venue. It would  
8 look similar to that interface that I showed you on our  
9 video.

10 Now, it wouldn't have the same questions. It  
11 wouldn't have -- I mean, obviously, the one you saw was  
12 talking about a bed and breakfast and describing  
13 bedrooms and everything else.

14 So this media venue interface would not have  
15 that information. That -- it would be replaced with  
16 questions, such as what background do you want; what  
17 font do you want to use; what other rules do you have  
18 for the presentations that you want to accept?

19 MR. NELSON: Your Honor, may we approach?  
20 I'm sorry. I didn't mean to interrupt.

21 THE COURT: Yes, you may approach.

22 (Bench conference.)

23 MR. NELSON: I just want to make sure  
24 that Mr. Verhoeven is not going to violate the limine on  
25 having Mr. Dean interpret any claim terms or what a

1 claim term means, and especially --

2 THE COURT: He isn't going to do that,  
3 but, you know, we're not going to summarize claim  
4 language in lay language. The jury is going to be bound  
5 by the Court's construction of the terms that the Court  
6 has construed.

7 And so, you know, they went into his  
8 understanding of the invention, so I'm going to give you  
9 a little bit of latitude, but -- I mean, this -- you  
10 need to start framing your question in the context of  
11 the claim terms as construed by the Court, okay, because  
12 this is going to be --

13 MR. VERHOEVEN: I understand.

14 THE COURT: -- going to be confusing to  
15 them to have multiple --

16 MR. VERHOEVEN: I understand.

17 MR. NELSON: And --

18 MR. VERHOEVEN: Can I just say something?

19 MR. NELSON: I'm sorry, sir.

20 MR. VERHOEVEN: I just want to establish  
21 that media venues is their publishers. Is that a  
22 problem?

23 THE COURT: Well, just ask him that.

24 MR. VERHOEVEN: That's not a --

25 MR. NELSON: And we'd ask for an

1 instruction that just says that you're ultimately going  
2 to give the definitions.

3 THE COURT: Well, they understand that.  
4 They've got copies of them. But I'll allow you to go  
5 there, and then let's move on.

6 MR. VERHOEVEN: Thank you, Your Honor.

7 MR. NELSON: Thank you, sir.

8 (Bench conference concluded.)

9 Q. (By Mr. Verhoeven) Now, this language here --  
10 I just want to ask one more question.

11 This internet media venue --

12 A. Yes.

13 Q. -- language, is it fair to say that's  
14 referring to publishers, internet media venues or  
15 website publishers?

16 A. You have two different internet media venues,  
17 two different references in that -- in that first  
18 element.

19 One is in reference to the operator of the  
20 internet media venue, and the other is in reference to  
21 the definition of the media venue.

22 Q. The first interface for the computer system  
23 through which each internet media venue is prompted to  
24 input presentation rules, let me just ask you -- this is  
25 a fancy word -- is that referring to website publishers,



1 or does that include website publishers?

2 A. The first one would be referring to the -- to  
3 the website publishers, yes.

4 Q. And you talked about how the publishers would  
5 input presentation rules, and that would go to the  
6 central controller in your direct examination, right?

7 A. Yes, because it says internet media venues is  
8 prompted.

9 Q. As of April 1998, it's correct, is it not,  
10 sir, that neither you nor Ms. Stone had the technical  
11 ability of writing software to create the media venue  
12 interface?

13 A. I believe we did.

14 Q. Well, I'd like to play -- we took your  
15 deposition. Do you remember that?

16 A. Yes.

17 Q. And I'd like to play a clip from your  
18 deposition dated September 9th, 2009, Page 61, Lines 8  
19 through 17.

20 MR. VERHOEVEN: Charles, do we have that  
21 up?

22 Q. (By Mr. Verhoeven) Let's see what you said at  
23 your deposition in response to that question.

24 (Video playing.)

25 QUESTION: As of April 1998, is it

1 correct that neither you nor Ms. Stone had the technical  
2 capability of writing the software code to create a  
3 media venue interface?

4 ANSWER: In '97, '98; is that correct?

5 QUESTION: That's correct.

6 ANSWER: Yeah. In '97 or '98, I did not  
7 have the ability to do that.

8 QUESTION: And neither did Ms. Stone, to  
9 your knowledge?

10 ANSWER: Neither did Ms. Stone.

11 (End of video clip.)

12 THE COURT: All right. Nine minutes is  
13 up, so now we're going to take our lunch recess, Ladies  
14 and Gentlemen. Be back ready to come in the courtroom  
15 at 1:15.

16 Remember my prior instructions, and don't  
17 talk about the case.

18 COURT SECURITY OFFICER: All rise.

19 (Jury out.)

20 THE COURT: All right. I'll see you at  
21 1:15.

22 MR. VERHOEVEN: I was just going to say,  
23 Your Honor, there may be a couple of issues that -- on  
24 my cross, that to save time, I might want to address  
25 with Your Honor before we start again, or should I

1 just approach the bench?

2 THE COURT: Well, be down -- be down at  
3 chambers at 5 after 1:00, and I'll take them up in  
4 chambers, okay?

5 MR. VERHOEVEN: Thank you, Your Honor.

6 THE COURT: Okay. If we need a record,  
7 I'll hold the jury out before we come back.

8 MR. VERHOEVEN: Thank you, Your Honor.

9 (Recess.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/\_\_\_\_\_  
SUSAN SIMMONS, CSR  
Official Court Reporter  
State of Texas No.: 267  
Expiration Date: 12/31/10

\_\_\_\_\_  
Date

/s/\_\_\_\_\_  
SHELLY HOLMES, CSR  
Deputy Official Court Reporter  
State of Texas No.: 7804  
Expiration Date 12/31/10

\_\_\_\_\_  
Date